

**HB**

**201**

9-GH0028\G  
Luckhaupt  
4/5/95

**CS FOR HOUSE BILL NO. 201(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

Offered:  
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, 4, 5, 8, 16.1, and 65, and Alaska  
5 Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing for an  
6 effective date."

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

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

9 **CHAPTER 19. PRISONER LITIGATION AGAINST THE STATE.**

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

11 A prisoner may not commence litigation against the state unless the prisoner has paid  
12 full filing fees to the court or is a claimant under AS 23/20, except that the court may  
13 exempt a prisoner from paying ~~part of these fees~~ if the court finds exceptional

*Al Employment Security Act*

1 circumstances as described in this section.

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

3 (1) an affidavit that sets out

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

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

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

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

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

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

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

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

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

5 Sec. 09.19.020. SERVICE OF PROCESS IN CERTAIN PRISONER CASES  
6 OR APPEALS. A prisoner may not commence service of process of the summons or  
7 service of the notice of appeal in litigation against the state without court approval  
8 under AS 09.19.030 or 09.19.040.

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

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

- 15 (1) material statements made by the prisoner are not untrue;
- 16 (2) the action or administrative appeal is not frivolous or malicious; and
- 17 (3) the pleadings filed set out specific facts that would, if proven,
- 18 (A) state a claim upon which relief may be granted, or
- 19 (B) entitle the prisoner to reversal on appeal.

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

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

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

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appears

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

*a court  
advising on  
validity of order  
Prisoner  
lem?*

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

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

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

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

Sec. 09.19.100. DEFINITIONS. In this chapter,

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

*(action)*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 CHAPTER 72. POST-CONVICTION RELIEF

29 PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

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

1 conviction relief if the person claims

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

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

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

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

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

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

16 (7) that

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

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

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

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

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

1 under the Alaska Rules of Criminal Procedure; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (A) was not known within

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

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

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

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

16 (C) is not impeachment evidence; and

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

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

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

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

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

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

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

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

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

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

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

12 (3) a petition for review or certiorari from an appellate court ruling on  
13 an application for post-conviction relief; or

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

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

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

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

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

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

*Why not fair?*

*P.D.*

1 *New* Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a)  
2 A prisoner may obtain judicial review by the superior court of a final disciplinary  
3 decision by the department only if the prisoner alleges specific facts establishing a  
4 violation of the prisoner's fundamental constitutional rights that prejudiced the  
5 prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner  
6 filing a notice of appeal and other required documents in accordance with AS 09.19  
7 or the applicable rules of court governing administrative appeals that do not conflict  
8 with AS 09.19. If the appeal is not dismissed under AS 09.19.010, a record of the  
9 proceedings shall be prepared by the department, consisting of the original papers and  
10 exhibits submitted in the disciplinary process and a cassette tape of the disciplinary  
11 hearing. The record shall be prepared and transmitted in accordance with the  
12 applicable rules of court governing administrative appeals.

13 (b) A disciplinary decision may not be reversed

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

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

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

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

29 \* Sec. 13. AS 33.32.060 is amended to read:

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

31 Except for execution by the state under AS 09.38.030(f), only [ONLY] the prisoner

1 payments retained by the commissioner of corrections under AS 33.32.050(d) are  
2 subject to lien, attachment, garnishment, execution, or similar procedures to encumber  
3 funds or property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) Release of Applicant Pending Review of Decision Ordering a New Trial.  
29 If an appeal of an order granting an applicant a new trial is pending, Appellate Rule  
30 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes  
31 conditions of release pending appeal.

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

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

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

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

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

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

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

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

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

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

23 or

24 (B) two years of unsuspended incarceration in a felony case or  
25 120 days of unsuspended incarceration in a misdemeanor case;

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

30 (5) 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. 19. 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. 20. 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 certified.

23 \* Sec. 21. 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. 22. Rule 11(c)(3), Alaska Rules of Criminal Procedure, is amended by adding new

1 subparagraphs to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) Time for Motion. A motion for a new trial based on the ground of newly  
31 discovered evidence may be made only before or within 180 days [TWO YEARS]

1 after final judgment, but if an appeal is pending the court may grant the motion only  
2 on remand of the case. A motion for a new trial based on any other grounds shall be  
3 made within 5 days after verdict or finding of guilt, or within such further time as the  
4 court may fix during the 5-day period.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (3) that a prior conviction has been set aside and the prior

1 conviction was used as a statutorily required enhancement of [THAT] the sentence  
2 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS  
3 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY  
4 LAW];

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

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

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

14 (7) that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (5) Alaska Rule of Civil Procedure 65, by restricting the availability of

1 injunctive relief in litigation against the state by a prisoner;

2 (6) Alaska Rules of Appellate Procedure 204 and 403, by altering the  
3 procedure for appeals and petitions for review in litigation by the state by prisoners; and

4 (7) Alaska Rule of Appellate Procedure 603, by restricting the availability of  
5 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department  
6 of Corrections.

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 201(JUD) (Work Draft dated 4/5/95)

1 Page 4, line 31, following "means":

2 Delete "an"

3 Insert "a civil"

#2 ✓ all adopted

4 Page 5, line 7:

5 Delete "the"

6 Insert "a"

#3 ✓  
#4 ✓

7 Page 8, line 23:

8 Delete "new"

9 Delete "in law"

# FISCAL NOTE

Bill Number: \_\_\_\_\_  
 (H) Publish Date: \_\_\_\_\_

**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  
 Sponsor: Rules by Request of the Governor Component: All  
 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

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. Peques, 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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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

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to prisoner litigation. BRU: all  
 Component: all

Sponsor: \_\_\_\_\_  
 Requester: Governor's Office 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

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: Margaret H. Pugh  
 Agency: Department of Corrections

Date: 2/21/95

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STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Bill Version: \_\_\_\_\_  
(H) Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Frivolous Prisoner Litigation DPS Statewide Support  
 Component: Commissioner's Office  
 Sponsor: Rules Governor  
 Requestor: Governor'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)

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:

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: Ronald L. Otte Date: 2/22/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Bill Number: \_\_\_\_\_  
(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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUND SOURCE: (Thousands of Dollars)

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

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

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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FISCAL NOTE

No. 5  
 Bill Version:  
 (H) Publish Date:

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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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: 2/27/95

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Luckhaupt  
4/4/95

**CS FOR HOUSE BILL NO. 201(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
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, 4, 5, 8, 16.1, and 65, and Alaska  
5 Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing for an  
6 effective date."

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

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

9 **CHAPTER 19. PRISONER LITIGATION AGAINST THE STATE.**

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

11 A prisoner may not commence litigation against the state unless the prisoner has paid  
12 full filing fees to the court or is a claimant under AS 23.20, except that the court may  
13 exempt a prisoner from paying part of those fees if the court finds exceptional

1 circumstances as described in this section.

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

3 (1) an affidavit that sets out

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

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

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

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

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

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

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

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

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

5 Sec. 09.19.020. SERVICE OF PROCESS IN CERTAIN PRISONER CASES  
6 OR APPEALS. A prisoner may not commence service of process of the summons or  
7 notice of appeal in litigation against the state without court approval under  
8 AS 09.19.030 or 09.19.040.

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

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

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

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

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

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

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

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

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

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

1 appears

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

3 (2) not to be frivolous; and

4 (3) not to be malicious.

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

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

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

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

30 Sec. 09.19.100. DEFINITIONS. In this chapter,

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

1 civil action or from the final decision of an administrative agency that involves the  
2 state, an officer or agent of the state, a former officer or agent of the state, or a state  
3 employee or a former state employee regarding conduct that occurred during that  
4 former employee's state employment, whether the officer, agent, or employee is sued  
5 in an official or a personal capacity;

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, to a state  
28 employee, or to a former state employee against a party to an action who is  
29 incarcerated for a criminal conviction by sending a notice of levy to the correctional  
30 facility in which the person is incarcerated. All money in an incarcerated person's  
31 account at a correctional facility is available for disbursement under a notice of levy

1 by the state under this subsection, in the following order of priority:

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

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

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

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

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

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

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

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

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

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

1 exceeds two years of unsuspended incarceration. By appealing a sentence under this  
2 section, the defendant waives the right to plead that by a revision of the sentence  
3 resulting from the appeal the defendant has been twice placed in jeopardy for the same  
4 offense.

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

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

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

25 CHAPTER 72. POST-CONVICTION RELIEF

26 PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

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

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

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

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

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

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

13 (7) that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           (A) suffered from a physical disability or from a mental disease  
29   or defect that precluded the timely assertion of the claim; or

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

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

4 (A) was not known within

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

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

9 (iii) one year after an administrative decision of the  
10 Board of Parole or the Department of Corrections is final if the claim  
11 relates to the administrative decision;

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

13 (C) is not impeachment evidence; and

14 (D) establishes by clear and convincing evidence that the  
15 applicant is innocent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a)  
30 A prisoner may obtain judicial review by the superior court of a final disciplinary  
31 decision by the department only if the prisoner alleges specific facts establishing a

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

10 (b) A disciplinary decision may not be reversed

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

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

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

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

26 \* Sec. 13. AS 33.32.060 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (B) a copy of a superior court order approving the party's  
31 supersedeas bond or other security in lieu of bond or a copy of the party's

1 motion to the superior court for approval of a supersedeas bond or other  
2 security;

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

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

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

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

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

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

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

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

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

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

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

31 (7) The provisions of this subsection do not apply to the filing fees in

1 a prisoner's appeal against the state or an officer, agent, employee, or former officer,  
2 agent, or employee of the state that is governed by the provisions of AS 09.19.

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

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

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

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

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

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

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

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

20 or

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

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

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

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

31 RULE 521. CONSTRUCTION. These rules are designed to facilitate business

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

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

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

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

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

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

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

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

30 (iii) that the defendant waives the right to appeal a  
31 sentence as excessive and waives the right to seek reduction of a

1 sentence under Criminal Rule 35 if a plea agreement between the  
2 defendant and the prosecuting attorney provides for a specific sentence  
3 or a sentence equal to or less than a specified maximum; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) Time for Motion. A motion for a new trial based on the ground of newly  
28 discovered evidence may be made only before or within 180 days [TWO YEARS]  
29 after final judgment, but if an appeal is pending the court may grant the motion only  
30 on remand of the case. A motion for a new trial based on any other grounds shall be  
31 made within 5 days after verdict or finding of guilt, or within such further time as the

1 court may fix during the 5-day period.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) that a prior conviction has been set aside and the prior  
29 conviction was used as a statutorily required enhancement of [THAT] the sentence  
30 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS  
31 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY

1 LAW];

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

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

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

11 (7) that

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

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

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

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

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

29 (9) that the applicant was not afforded effective assistance of  
30 counsel at trial or on direct appeal [, WHEN SUFFICIENT REASONS EXIST TO  
31 ALLOW RETROACTIVE APPLICATION OF THE CHANGED LEGAL

1 STANDARDS; MAY INSTITUTE A PROCEEDING UNDER THIS RULE TO  
2 SECURE RELIEF].

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

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

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

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

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

30 (g) Hearing -- Evidence -- Order. The application shall be heard in, and  
31 before any judge of, the court in which the conviction took place. An electronic

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

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

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

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

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

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

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

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

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

30 (6) Alaska Rules of Appellate Procedure 204 and 403, by altering the  
31 procedure for appeals and petitions for review in litigation by the state by prisoners; and

1                   (7) Alaska Rule of Appellate Procedure 603, by restricting the availability of  
2 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department  
3 of Corrections.

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

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

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

## HB 201 (FRIVOLOUS PRISONER LITIGATION)

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.

With respect to prisoner litigation, this bill is designed to reduce the number of frivolous suits that are preventing the state and the court from giving adequate attention to legitimate lawsuits. 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. This Act requires 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 Act recognizes prisoners' right of access to the courts and reduces frivolous litigation without infringing on that right.

With respect to sentence appeals, this bill prevents defendants from appealing as excessive 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.

Finally, this bill sets limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures and lost. This bill limits these already-litigated post-conviction relief claims by prohibiting ones that are based on the erroneous admission of evidence, illegal searches and seizures, or the excessiveness of a sentence, and by requiring that a post-sentence attempt to withdraw a plea be brought as a post-conviction relief application.

## HB 202 (PARENTAL ACCOUNTABILITY)

HB 202 is designed to increase parental participation and responsibility.

It authorizes a court in delinquency proceedings to require a parent to attend all of the hearings that concern their children.

It also authorizes the court to order the parents to participate in treatment when appropriate.

The bill also requires parents to be responsible for the payment of restitution for harm caused by their children, unless their children have reported as "runaways."

9-GH0028\R.1 ✓  
Luckhaupt  
4/28/95

AMENDMENT

#1

By Rep. Porter



OFFERED IN THE HOUSE  
TO: CSHB 201(FIN)

1 Page 1, line 1, following "litigation,"

2 Insert "post-trial motions"

3 Page 5, following line 21:

4 Insert a new bill section to read:

5 "\* Sec. 6. AS 12.55.088(a) is amended to read:

6 (a) The court may modify or reduce a sentence by entering a written order  
7 under a motion made within 180 [60] days of the original sentencing."

8 Renumber the following bill sections accordingly.

9 Page 10, line 9, after "AS 12.72":

10 Insert "or an untimely or successive motion for reduction or modification of sentence"

11 Page 18, line 12:

12 Delete "120"

13 Insert "180"

14 Page 18, following line 23:

15 Insert a new bill section to read:

16 "\* Sec. 31. Rule 35, Alaska Rules of Criminal Procedure, is amended by adding new  
17 subsections to read:

18 (e) An indigent defendant not already represented by counsel may request the  
19 court to appoint counsel for purposes of filing a motion under this rule. If the  
20 defendant is represented by appointed counsel, counsel may file with the court and

- 1 serve on the prosecuting attorney a certificate that counsel
- 2 (1) does not have a conflict of interest;
- 3 (2) has completed a review of the facts and law related to sentence;
- 4 (3) has consulted with the applicant and, if appropriate, with trial and
- 5 appellate counsel; and
- 6 (4) has determined that a motion under this subsection would not
- 7 warrant relief by the court.

8 (f) If appointed counsel has filed a certificate under (e) of this rule, and it  
 9 appears to the court that the applicant is not entitled to relief, the court shall indicate  
 10 its intention to permit counsel to withdraw and, if appropriate, to dismiss the motion.  
 11 The applicant and the prosecuting attorney shall be given an opportunity to reply to  
 12 the proposed withdrawal or dismissal. If the defendant files a response and the court  
 13 finds that a motion under this rule would not warrant relief, the court shall permit  
 14 counsel to withdraw and, if appropriate, dismiss the motion. If the court finds that  
 15 a motion under this rule may warrant relief, the court may direct that the proceedings  
 16 continue or take other appropriate action."

17 Renumber the following bill sections accordingly.

18 Page 23, following line 21:

19 Insert new bill sections to read:

20 **\*\* Sec. 41. APPLICABILITY.** This Act applies to offenses committed before, on, or after  
 21 the effective date of this Act.

22 **\* Sec. 42. SPECIAL APPLICABILITY OF SECTIONS 29 - 31.** (a) Notwithstanding  
 23 Rule 35, Alaska Rules of Criminal Procedure, as amended in secs. 29 - 31 of this Act, the  
 24 trial court, under Rule 35(b), as amended by this Act, may reduce the sentence of a defendant  
 25 sentenced before the effective date of this section if the defendant took an appeal and the  
 26 sentence reduction occurs within 120 days of the day that jurisdiction is returned to the trial  
 27 court under Rule 507(b), Alaska Rules of Appellate Procedure, unless the defendant petitions  
 28 the United States Supreme Court for certiorari, in which case the 120 days commences on  
 29 the day that the Supreme Court denies relief.

30 (b) This section has the effect of amending Rule 35, Alaska Rules of Criminal

1 Procedure."

2 Renumber the following bill sections accordingly.

3 Page 24, line 6:

4 Delete "14 and 38"

5 Insert "15, 40, and 41"

6 Delete "37 and 39"

7 Insert "39, 42, and 43"

## SECTIONAL ANALYSIS FOR HB 201

The purpose of this bill is to reduce the amount of "frivolous litigation" filed by prisoners. 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.

Sections 1-5, 13-15, 17, 20-31, and 31 relate to civil litigation. Sections 7, 8, 11, 12, 18, 22, 27, and 28 relate to sentence appeals. Most of the remaining sections of this bill relate to post-conviction relief applications.

Section 1: Creates a new chapter in Title 09, entitled "prisoner litigation against the state." There are eight statutes in this new chapter. The first, AS 09.19.010, requires prisoners who are suing the state -- even if they are "indigent" -- to pay some part of the usual fees required when a new case is filed with the court. The fee is determined by examining the prisoner's financial situation. The prisoner must pay at least 20% of the average monthly balance maintained in the prisoner's account at the correctional facility.

~~If a prisoner pays less than full filing fees,~~ The next three sections (AS 09.19.015, AS 09.19.017, AS 09.19.019) prohibit the prisoner's complaint or appeal from being accepted unless the court finds that it is not frivolous.

AS 09.19.020 limits the circumstances in which a court may stay imposition of a disciplinary decision of the Department of Corrections. AS 09.19.030 prohibits a court from granting injunctive relief that places burdens on the state beyond what is required by statute or by the constitution.

AS 09.19.040 specifies that the Civil Rule's provisions for automatic discovery do not apply in prisoners' suits filed against the state. The last statute, AS 09.19.900 defines the terms "prisoner." + *litigation against the state*.

Section 2: Technical amendment needed to conform with section 4.

Section 3: Technical amendment needed to conform with section 4.

Section 4: Amends AS 09.38.030 to add a new subsection (f), which makes it easier for the state to collect judgments awarded against a prisoner by eliminating certain exemptions. An order of priority is set out in the statute, starting with child support payments and restitution ordered to be paid by the prisoner.

Section 5: Technical amendment needed to conform with section 4.

Section 6: Amends one of the state's bail statutes to specify that a prisoner who files an application for post-conviction relief cannot be released on bail until all of the prisoner's convictions have been vacated.

Section 7: Amends the felony sentencing statute to provide that sentence appeals cannot be filed in felony cases in which less than two years of unsuspended imprisonment was imposed by the court. Furthermore, a defendant cannot appeal that portion of a sentence that the defendant agreed to in a plea agreement with the state.

Section 8: Amends the misdemeanor sentencing statute to provide that sentence appeals cannot be filed in misdemeanor cases in which less than 120 days of unsuspended imprisonment was imposed by the court. Furthermore, a defendant cannot appeal that portion of a sentence that the defendant agreed to in a plea agreement with the state.

Section 9: Adds to the Criminal Code in Title 12 a new chapter, entitled "post-conviction relief procedures for persons convicted of criminal offenses." AS 12.72.010 sets out the scope of claims that may be raised in a petition for post-conviction relief, most of which are currently included in Criminal Rule 35.1. AS 12.72.020 specifies certain limitations on the availability of post-conviction relief, such as that the claim was decided on its merits in a previous proceeding. AS 12.72.030 specifies that a claim for post-conviction relief shall be filed with the court where the underlying action was filed. AS 12.72.040 imposes the "clear and convincing evidence" standard in post-conviction relief proceedings. *(present law is "preponderance")*

Section 10: Amends AS 18.85.100 to specify that an indigent person is entitled to appointed counsel for purposes of bringing a timely application for post-conviction relief, but not for purposes of filing untimely or successive applications or appeals from denied applications.

Section 11: Amends AS 22.07.020(b), the jurisdictional statute for the court of appeals, to specify that sentence appeals may be taken only from sentences imposing more than two years of unsuspended incarceration.

Section 12: Amends AS 22.10.020(f), the jurisdiction statute relating to appeals in the superior court, to specify that sentence appeals may be taken only from district court sentences imposing more than 120 days of unsuspended incarceration.

Section 13: Amends AS 33.30 to set out standards for courts reviewing prisoner disciplinary decisions, and to require a prisoner to allege specific facts establishing a violation of the prisoner's fundamental constitutional rights.

Section 14: Amends Administrative Rule 10, the rule governing exemptions from filing fees, to exclude its application to prisoner suits against the state, which instead are governed by new AS 09.19.

Section 15: Amends Appellate Rule 204(b), governing the procedure for filing appeals, to recognize that prisoners filing cases against the state may pay less than full filing fees under AS 09.19.010.

Section 16: Repeals and reenacts Appellate Rule 208, relating to the custody of prisoners in post-conviction relief proceedings, to specify that appellate courts may not grant bail to an applicant for post-conviction relief, but instead must remand the issue to the trial court.

Section 17: Amends Appellate Rule 209, addressing appeals at public expense, to specify that the waiver of filing fees in appeals from prisoners' suits against the state is governed by new AS 09.19.

Section 18: Repeals and reenacts Appellate Rule 215, governing sentence appeals, to specify that a defendant has no right to appeal a sentence as excessive if the sentence does not exceed two years' unsuspended incarceration for a felony or 120 days for a misdemeanor, nor may a defendant appeal a sentence that was imposed in accordance with a plea agreement under Criminal Rule 11.

Section 19: Amends Appellate Rule 521, relating to the proper construction of the appellate rules, to specify that appellate courts may not accept appeals filed more than 60 days late or petitions for review filed more than 30 days late.

Section 20: Amends Appellate Rule 603, regarding stays, to specify that prisoner disciplinary sanctions may not be stayed by a court unless certain standards are met, including that the prisoner must allege a violation of a fundamental constitutional right and must be likely to succeed on the merits.

Section 21: Amends Appellate Rule 604, governing records on appeal, to specify that the record in an appeal from a prisoner disciplinary decision will be based on cassette recordings, rather than transcripts, of the proceedings.

Section 22: Amends Criminal Rule 11 to specify that defendants who enter into plea agreements waive the right to appeal as excessive a sentence, or that part of a sentence, to which they agreed.

Section 23: Amends Criminal Rule 11 to specify that a court that accepts a plea agreement will sentence the defendant in accordance with the plea agreement.

Section 24: Amends Criminal Rule 11 to specify that the prosecuting attorney is not bound by a plea agreement that is rejected by the court.

Section 25: Amends Criminal Rule 11 to specify that a defendant may <sup>only</sup> withdraw a plea in a criminal case before sentence is imposed; thereafter, a defendant who wants to withdraw the plea must file for post-conviction relief.

Section 26: Amends Criminal Rule 33, relating to new trials, to specify that a court may not grant a new trial in a criminal case on the basis that the jury's verdict is contrary to the weight of the evidence. It also amends this rule to reduce from two years to 180 days the length of time during which a motion for new trial may be filed on the basis of newly discovered evidence.

Section 27: Repeals and reenacts Criminal Rule 35(a) to provide that the court may correct an illegal sentence at any time, *which is the in the present rule; eliminates portion of rule which allows reduction of sentence within 120 days of imposition*

Section 28: Repeals and reenacts Criminal Rule 35(b) to specify that an appellate court may not modify or reduce a sentence below that which the defendant agreed to in a plea agreement; *also provides that court may only modify or reduce within 60 days of distribution of written judgment; the current rule allows modification at any time for changed circumstances*

Section 29: Amends Appellate Rule 35.1, relating to post-conviction relief, to conform this rule with new AS 12.72, set out in section 9 supra. *stance*

Section 30: Amends Criminal Rule 35.1 to indicate where and when petitions for post-conviction relief are to be filed.

Section 31: Amends Criminal Rule 35.1 to specify that if an application for post-conviction relief challenges a Department of Corrections or Parole Board decision, it must set out certain information, including the nature of the proceedings or challenged decision, the date of the proceedings, the relief desired, and the facts and grounds on which the application is based.

Section 32: Amends Criminal Rule 35.1 to specify that an applicant for post-conviction relief must establish factual assertions by clear and convincing evidence. This section also authorizes courts to allow defendants to participate in a hearing telephonically or by video conferencing. It also specifies that the automatic disclosure provisions of the Civil Rules do not apply to these proceedings.

Section 33: Repeals Criminal Rule 35.1(h), relating to the waiver or failure to assert claims in post-conviction relief applications, which is now addressed in AS 12.72, set out in section 9 supra.

Section 34: Specifies that defendants have one year after the effective date of this bill within which to file a claim for post-conviction relief under AS 12.72.

Section 35: Specifies that the exemption for prisoner litigation from the automatic disclosure provisions of the Civil Rules take effect only when and if these automatic disclosure provisions are enacted by the Supreme Court.

Section 36: Specifies that this Act takes effect on July 1, 1995, if it receives the two-thirds majority vote of each house required when court rules are amended by the legislature.

**CS FOR HOUSE BILL NO. 201(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 4/24/95**

**Referred: Rules**

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

**A BILL**

**FOR AN ACT ENTITLED**

*Post-conviction relief*

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~~ of  
23 section and in AS 09.38.050. The term "liquid assets" includes deposits, ~~and~~  
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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or defect that precluded the timely assertion of the claim; or

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

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

(A) was not known within

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

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

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

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

(C) is not impeachment evidence; and

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

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

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

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

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

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(c);

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) the notice of 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 60 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.

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

30 (c) Time for Motion. A motion for a new trial based on the ground of newly  
31 discovered evidence may be made only before or within 180 days [TWO YEARS]

1 after final judgment, but if an appeal is pending the court may grant the motion only  
2 on remand of the case. A motion for a new trial based on any other grounds shall be  
3 made within 5 days after verdict or finding of guilt, or within such further time as the  
4 court may fix during the 5-day period.

5 \* Sec. 28. Rule 35(a), Alaska Rules of Criminal Procedure, is repealed and reenacted to  
6 read:

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

9 \* Sec. 29. Rule 35(b), Alaska Rules of Criminal Procedure, is repealed and reenacted to  
10 read:

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

12 (1) may modify or reduce a sentence within 120 days of the distribution  
13 of the written judgment upon a motion made in the original criminal case;

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

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

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

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

24 \* Sec. 30. Rule 35.1(a), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

31 (3) that a prior conviction has been set aside and the prior

1 conviction was used as a statutorily required enhancement of [THAT] the sentence  
2 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS  
3 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY  
4 LAW];

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

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

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

14 (7) that

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

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

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

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

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

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

6 \* Sec. 31. Rule 35.1(c), Alaska Rules of Criminal Procedure, is amended to read:

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

14 \* Sec. 32. Rule 35.1(d), Alaska Rules of Criminal Procedure, is amended to read:

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

1 to the applicant for completion.

2 \* Sec. 33. Rule 35.1(e), Alaska Rules of Criminal Procedure, is amended to read:

3 (e) Indigent Applicant.

4 (1) If the applicant is indigent, filing fees shall be paid under the  
5 provisions of AS 09.19 and [, TRANSCRIPT AND OTHER COURT COSTS SHALL  
6 BE BORNE BY THE STATE. WHERE THE COURT DETERMINES THAT THE  
7 APPLICATION SHALL NOT BE SUMMARILY DISPOSED OF ON THE  
8 PLEADINGS AND RECORD PURSUANT TO SUBDIVISION (f) OF THIS RULE,  
9 BUT THAT THE ISSUE RAISED BY THE APPLICATION REQUIRE AN  
10 EVIDENTIARY HEARING,] counsel shall be appointed consistent with AS 18.85.100  
11 to assist the applicant [INDIGENT APPLICANTS].

12 (2) Within 60 days of court appointment under (e)(1) of this rule,  
13 counsel shall file with the court and serve on the prosecuting attorney

14 (A) an amended application or a notice that counsel will  
15 proceed on the grounds alleged in the application filed by the applicant;  
16 or

17 (B) a certificate that counsel

18 (i) does not have a conflict of interest;

19 (ii) has completed a review of the facts and law in the  
20 underlying proceeding or action challenged in the application;

21 (iii) has consulted with the applicant and, if  
22 appropriate, with trial counsel; and

23 (iv) has determined that the application does not  
24 allege a colorable claim for relief.

25 \* Sec. 34. Rule 35.1(f)(1), Alaska Rules of Criminal Procedure, is amended to read:

26 (1) The state shall file an answer or a motion within 45 days of  
27 service of an original, amended, or supplemental application filed by counsel or  
28 by an applicant who elects to proceed without counsel, or of a notice of intent to  
29 proceed on the original application under (e)(2)(A) of this rule. The applicant  
30 shall have 30 days to file an opposition, and the state shall have 15 days to file a  
31 reply. The motion, opposition, and reply may be supported by affidavit. [WITHIN

1 30 DAYS AFTER THE FILING OF THE APPLICATION, OR WITHIN SUCH  
2 FURTHER TIME AS THE COURT MAY FIX, THE STATE SHALL RESPOND BY  
3 ANSWER OR BY MOTION WHICH MAY BE SUPPORTED BY AFFIDAVITS.]

4 At any time prior to entry of judgment the court may grant leave to withdraw the  
5 application. The court may make appropriate orders for amendment of the application  
6 or any pleading or motion, for pleading over, for filing further pleadings or motions,  
7 or for extending the time of the filing of any pleading. In considering a pro se [THE]  
8 application the court shall consider substance and disregard defects of form, but a pro  
9 se applicant will be held to the same burden of proof and persuasion as an  
10 applicant proceeding with counsel. If the application is not accompanied by the  
11 record of the proceedings challenged therein, the respondent may [SHALL] file with  
12 its answer the record or portions thereof that are material to the questions raised in the  
13 application.

14 \* Sec. 35. Rule 35.1(f)(2), Alaska Rules of Criminal Procedure, is amended to read:

15 (2) If appointed counsel has filed a certificate under (e)(2)(B) of this  
16 rule, and it appears to the court that the applicant is not entitled to relief, the  
17 court shall [WHEN A COURT IS SATISFIED, ON THE BASIS OF THE  
18 APPLICATION, THE ANSWER OR MOTION, AND THE RECORD, THAT THE  
19 APPLICANT IS NOT ENTITLED TO POST-CONVICTION RELIEF AND NO  
20 PURPOSE WOULD BE SERVED BY ANY FURTHER PROCEEDINGS, IT MAY]  
21 indicate to the parties its intention to permit counsel to withdraw and dismiss the  
22 application and its reasons for so doing. The applicant and the prosecuting attorney  
23 shall be given an opportunity to reply to the proposed withdrawal and dismissal. If  
24 the applicant files a response and the court finds that the application does not  
25 present a colorable claim, or if the applicant does not file a response, the court  
26 shall permit counsel to withdraw and [IN LIGHT OF THE REPLY, OR ON  
27 DEFAULT THEREOF, THE COURT MAY] order the application dismissed. If the  
28 court finds that the application presents a colorable claim, the court may [OR]  
29 grant leave to file an amended application or direct that the proceedings otherwise  
30 continue. [DISPOSITION ON THE PLEADINGS AND RECORD SHALL NOT BE  
31 MADE WHEN A MATERIAL ISSUE OF FACT EXISTS.]

1 \* Sec. 36. Rule 35.1(g), Alaska Rules of Criminal Procedure, is amended to read:

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

19 \* Sec. 37. Alaska Rule of Criminal Procedure 35.1(h) is repealed.

20 \* Sec. 38. Notwithstanding any other provision of this Act, a person whose conviction was  
21 entered before July 1, 1994, has until July 1, 1996, to file a claim under AS 12.72.

22 \* Sec. 39. (a) Section 1 of this Act has the effect of amending

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

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

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

30 (4) Alaska Rules of Appellate Procedure 204 and 403, by altering the  
31 procedure for appeals and petitions for review in litigation by the state by prisoners; and

1 (5) Alaska Rule of Appellate Procedure 603, by restricting the availability of  
2 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department  
3 of Corrections.

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

6 \* Sec. 40. Sections 1 - 14 <sup>15, 40+41</sup> and ~~38~~ of this Act take effect only if secs. 15 - <sup>39, 42 & 43</sup> ~~37~~ and ~~39~~ of this  
7 Act take effect.

8 \* Sec. 41. If this Act takes effect, it takes effect July 1, 1995.

*Conforming to the amended bill*