

**HB**

**201**

TONY KNOWLES  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
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*HB 201*

February 27, 1995

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

Dear Speaker Phillips:

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

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

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

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

The Honorable Gail Phillips  
February 27, 1995  
Page 2

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

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

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

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

The Honorable Gail Phillips  
February 27, 1995  
Page 3

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

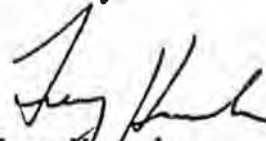
Current law allows a defendant to try to withdraw a plea of guilty or no contest after entering the plea or even after being sentenced if the defendant so chooses. Section 25 requires a defendant who wants to withdraw a plea after having been sentenced to file an application for post-conviction relief.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

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

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

I urge your favorable action on this bill.

Sincerely,



Tony Knowles  
Governor

## 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 term "prisoner."

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.

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 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.

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.

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.

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.

# FISCAL NOTE

No. 1  
 Bill Version: HB 201  
 (H) Publish Date: 2/27/95

**STATE OF ALASKA  
 1995 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...relating to prisoner litigation, post-conviction  
relief, sentence appeals...Alaska Administrative Rule 10..." BRU: Prosecution  
 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>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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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# FISCAL NOTE

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

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						
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CHANGE IN REVENUES ( )						
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**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  
 Approved by Commissioner: *W. Marshall*  
 Agency: Department of Corrections

Phone: 465-5582  
 Date: 2/21/95  
 Date: 2/21/95

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# FISCAL NOTE

**STATE OF ALASKA  
1995 LEGISLATIVE SESSION**

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

Revision Date: \_\_\_\_\_ 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						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

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

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

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

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

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

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

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 *John Salemi*  
Division: Public Defender Agency

Phone: 264-4412  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer *Mark Boyer*  
Agency: Department of Administration

Date: 2/22/95

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# FISCAL NOTE

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

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

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

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

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

<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
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<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
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**FUND SOURCE:**

(Thousands of Dollars)

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

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

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

Prepared by: Brant McGee, Director  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 2/27/95

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# STATE OF ALASKA

## DEPARTMENT OF LAW

CRIMINAL DIVISION

February 28, 1995

TCNY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
110 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2064  
PHONE: (907) 263-6250  
FAX: (907) 263-6270

The Hon. Jeannette James, Chair  
House State Affairs Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801


Re: HB 201 (prisoner litigation)

Dear Representative James:

This is to express appreciation for your scheduling HB 201, relating to frivolous prisoner litigation, for hearing on Tuesday, March 7, 1995. This bill is one of six that make up the Governor's crime package. We appreciate your prompt attention. If you have any questions or desire any further information about the bill, please do not hesitate to contact me.

Very Truly Yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Laurie H. Otto  
Deputy Attorney General

LHO:jf

*Thanks!*

## 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 term "prisoner."

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.

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 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.

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.

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.

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.