

HB

2


REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 11, 2003

TO: Senator Ralph Seekins
Chairman, Senate Judiciary Committee

FROM: Representative Kevin Meyer 

RE: CS HB 2(JUD)(title am) Civil Statute of Limitation/Sex Offenses

At your earliest convenience, please schedule CS HB 2(JUD)(title am) Civil Statute of Limitation/Sex Offenses for a hearing in the Senate Judiciary Committee.

CS HB 2(JUD)(title am) clarifies which sexual assault crimes have a three-year statute of limitation on civil actions, and which felonies have no statute of limitation on civil actions.

In 2001, the Twenty-second Legislature passed HB 210 Statute of Limitation: Sexual Assault and Sexual Abuse of a Minor. HB 210 was amended on the House Floor and as a result, several statutory inconsistencies pertaining to the civil statute of limitations for misdemeanor sexual assault and sexual abuse crimes were created. CS HB 2(JUD)(title am) cleans up the inconsistencies that were created as a result of the floor amendment.

Thank you for your time and consideration.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS HB 2(JUD)(title am)

“An Act relating to the statute of limitations for certain civil actions relating to acts constituting sexual offenses; and providing for an effective date.”

CS HB 2(JUD)(title am) is a clean-up bill that clarifies which misdemeanors and felonies involving sexual assault and sexual abuse have a three-year statute of limitations on civil actions, and which felonies have no statute of limitations on civil actions.

In 2001, the Twenty-second Legislature passed HB 210 Statute of Limitations: Sexual Assault and Sexual Abuse of a Minor. The original intent of HB 210 was to remove the criminal statute of limitations for felony sexual assault and sexual abuse of a minor. HB 210 was amended on the House floor and, as a result, both the criminal and the civil statute of limitations for all felony sexual assault and felony sexual abuse of a minor were removed. The floor amendment caused several statutory inconsistencies pertaining to civil statute of limitations.

The 2001 floor amendment did not reference “felony sexual abuse of a minor” and “felony sexual assault” to particular sections of the criminal code. The floor amendment did not make clear whether certain felonies included in AS 09.10.060(c) that are not sexual assault or sexual abuse of a minor, are intended to have: 1. No statute of limitations; 2. A two-year statute of limitations; or, 3. A three-year statute of limitations.

Also, the floor amendment did not make a specific provision for misdemeanor sexual abuse or sexual assault crimes. As a consequence, the civil statute of limitations for those crimes dropped to two years, for torts in general. Prior to the floor amendment, the statute of limitations was three years.

CS HB 2(JUD)(title am) establishes the civil statute of limitations at three years for misdemeanor sexual assault, misdemeanor sexual abuse of a minor, incest, and felony indecent exposure. Under CS HB 2(JUD)(title am), unlawful exploitation of a minor, a class B felony, is added to the list of sexual assault crimes in which the civil statute of limitations is removed.

Last Updated: March 31, 2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 2(JUD)
 (H) Publish Date: 3/12/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Statute of Limitation for Sex Crimes BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Meyer
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 2.

Prepared by: Douglas Wooliver, Administrative Attorney
 Division Alaska Court System
 Approved by: Stephanie Cole, Administrative Director
 Agency Alaska Court System

Phone 463-4750
 Date/Time 3/12/03 2:26 PM
 Date 3/12/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 2(JUD)
(H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the statute of limitations for BRU Civil Division
certain civil actions; . . ." Component Special Litigation
Sponsor Representative Meyer
Requester House Judiciary Committee Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPEATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
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1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill removes the statute of limitations for when a person may bring a civil action for unlawful exploitation of a minor, and extends the statute of limitations for other civil actions stemming from certain criminal conduct.

This bill concerns private rights of action against perpetrators of specified criminal conduct, and will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 3/10/03 11:28 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/10/2003
Agency Department of Law

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MEMORANDUM

February 10, 2003

SUBJECT: HB 2 (Work Order No. 23-LS0008\A); Civil Statute of Limitations for sex offenses

TO: Represented by  Devin Meyer

FROM: Pam Finley 
Revisor of Statutes

You have asked for a sectional analysis of HB 2.

Bill section 1. This section amends AS 09.10.065 by adding unlawful exploitation of a minor to the list of sex offenses that do not have a civil statute of limitations. The amendment also clarifies that (1) it is the defendant's conduct, not a criminal conviction, that makes the section apply, and (2) for the purposes of this section, the defendant's conduct is to be judged according to the elements of the offenses as they existed at the time of the offense (not, for example, at the time the civil lawsuit is filed.)

Bill section 2. This bill section establishes a three year civil statute of limitations for conduct constituting misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure. Currently, acts described by these offenses would have a two year civil statute of limitations under AS 09.10.070.

Bill section 3. This bill section amends AS 09.10.140(b) to conform to the fact that conduct covered by AS 09.10.065(a) ---in bill section 1--- no longer has a statute of limitations. It is essentially a technical amendment.

Bill section 4. This bill section makes bill sections 1-3 retroactive to October 1, 2001, which was the effective date of sec. 1, ch. 86, SLA 2001. Section 1, ch. 86, SLA 2001, eliminated the civil statute of limitations for felony sexual abuse of a minor and felony sexual assault and also indirectly changed the civil statute of limitations for unlawful exploitation of a minor, misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure from three years to two years. Based on discussions of last year's revisor's bill, it appears that the legislature did not intend the indirect change from three years to two years. To reflect the legislature's intent in restoring the three year civil statute of limitations, this bill is made retroactive. (The addition of unlawful exploitation of a minor to those offenses that have no civil statute of limitations is also retroactive, as is the technical amendment in bill section 3.) While I do

not believe that this provision creates any constitutional problems, the bill does limit retroactivity "to the extent permitted by the state and federal constitutions."¹

Bill section 5. This bill section gives the bill an immediate effective date.

Because it may be helpful to see the statutes to which this bill relates, I have set out below AS 09.10.070 (the two year statute of limitations for torts in general), AS 09.55.650 (referred to in sec. 3), and the current versions of related criminal statutes. I am also attaching copies of the former statutes referred to in AS 09.55.650(c), as they existed at the time of their repeal in 1980.

AS 09.10.070. (general statute of limitations for torts):

Sec. 09.10.070. Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.

(a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

(b) A person may not bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the nonpayment of money collected upon an execution, unless brought within two years. This subsection does not apply to an action for an escape.

AS 09.55.650 (referred to in sec. 3):

Sec. 09.55.650. Claim based on sexual abuse to a minor under 16 years of age.

(a) A person who, as a minor under 16 years of age, was the victim of sexual abuse may maintain an action for recovery of damages against the perpetrator of the act

¹ Normally, a civil statute of limitations may be extended before it has expired. Assuming that HB 2 takes effect before October 1, 2003, the statute of limitations for all acts occurring after ch. 86, SLA 2001 took effect will not have expired. However, there may be acts that occurred while the statute of limitations was three years (e.g., in 2000), but which would have been barred in 2002 under a two year statute of limitations. There are some cases in some jurisdictions that suggest that a defendant may have a vested, constitutionally protected right not to be sued once the statute of limitations has expired. See discussion at 51 AM JUR 2d, Limitation of Actions §§ 4, 49, 50, and 51. While these may be distinguishable from the situations covered by HB 2, and while Alaska's Supreme Court has not ruled on this issue, I thought it prudent to indicate that even if the constitution prevents HB 2 from being applied retroactively to some cases, it should be applied retroactively to those cases for which there is no constitutional impediment.

or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse.

(b) If the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff is not required to prove which specific act caused the injury.

(c) In this section, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458, former AS 11.15.120, 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was committed.

AS 11.41.410 - 11.41.458

Sec. 11.41.410. Sexual assault in the first degree.

(a) An offender commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state; or

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.420. Sexual assault in the second degree.

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state;

(3) the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

- (4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and
 - (A) the offender is a health care worker; and
 - (B) the offense takes place during the course of professional treatment of the victim.
- (b) Sexual assault in the second degree is a class B felony.

Sec. 11.41.425. Sexual assault in the third degree.

- (a) An offender commits the crime of sexual assault in the third degree if the offender
 - (1) engages in sexual contact with a person who the offender knows is
 - (A) mentally incapable;
 - (B) incapacitated; or
 - (C) unaware that a sexual act is being committed;
 - (2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or
 - (3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.
- (b) Sexual assault in the third degree is a class C felony.

Sec. 11.41.427. Sexual assault in the fourth degree.

- (a) An offender commits the crime of sexual assault in the fourth degree if
 - (1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or
 - (2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.
- (b) Sexual assault in the fourth degree is a class A misdemeanor.

Sec. 11.41.432. Defenses.

- (a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.425 that the offender is
 - (1) mentally incapable; or
 - (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.
- (b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

Sec. 11.41.434. Sexual abuse of a minor in the first degree.

(a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or

(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.436. Sexual abuse of a minor in the second degree.

(a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) - (6); or

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the second degree is a class B felony.

Sec. 11.41.438. Sexual abuse of a minor in the third degree.

(a) An offender commits the crime of sexual abuse of a minor in the third degree if

(1) being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the third degree is a class C felony.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.

(a) An offender commits the crime of sexual abuse of a minor in the fourth degree if

(1) being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

Sec. 11.41.445. General provisions.

(a) In a prosecution under AS 11.41.434 - 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant

(1) reasonably believed the victim to be that age or older; and

(2) undertook reasonable measures to verify that the victim was that age or older.

Sec. 11.41.450. Incest.

(a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony.

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to

engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

Sec. 11.41.458. Indecent exposure in the first degree.

(a) An offender commits the crime of indecent exposure in the first degree if

(1) the offender violates AS 11.41.460(a);

(2) while committing the act constituting the offense, the offender knowingly masturbates; and

(3) the offense occurs within the observation of a person under 16 years of age.

(b) Indecent exposure in the first degree is a class C felony.

PF:lmb
03-025.lmb

Enclosure:

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: May 1, 2003

TO: Senate Judiciary Committee *Ki* members

FROM: Representative Kevin Meyer *Ki*

RE: CS HB 2 (JUD)(title am) Civil Statute of Limitation/Sex Offenses

Following the April 28, 2003 committee hearing on CS HB 2(JUD)(title am), I contacted Pam Finley, Revisor of Statutes. I asked her to prepare a memorandum addressing Senator Ogan's questions and concerns pertaining to Section 4 of the bill. I have attached the memo I have received pertaining to the retroactivity provisions of this legislation.

Thank you for your time and consideration.

LEGAL SERVICES

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MEMORANDUM

May 1, 2003

SUBJECT: Retroactivity Clause in CSHB 2 (JUD)

TO: Representative Kevin Meyer
Attn: Suzanne

FROM: Pam Finley *MF*
Revisor of Statutes

You have asked the following two questions about the retroactivity provisions of section 4 of CSHB 2(JUD):

1. Will the phrase "To the extent permitted by the state and federal constitutions" encourage lawsuits? Could the phrase be dropped? I suspect that most lawyers would consider the constitutionality of retroactivity, even if the bill section did not mention it. However, it is likely that even if the phrase were deleted the courts would apply the retroactive provision in those cases where it was constitutional to do so and would not apply the retroactive provision in those cases where it would be unconstitutional to do so. If the phrase is to be deleted, it should be made clear that deleting the phrase is done only to avoid encouraging constitutional challenges.

2. What would be the effect if section 4 were deleted? If CSHB 2 (JUD) were not retroactive, a defendant could argue that from October 1, 2001 until the effective date of CSHB 2 (JUD), the statute of limitations for civil actions based on unlawful exploitation of a minor, misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure was two years and therefore:

(1) civil actions based on those crimes that were committed from October 1, 2001 until the day CSHB 2 (JUD) takes effect must be brought within two years rather than at any time (for unlawful exploitation of a minor) or within three years (for the others listed); in other words, that the statute of limitations in effect at the time the crime was committed is the statute of limitations that applies; or

(2) statutes of limitations based on crimes committed before October 1, 2001, that had a three year statute of limitations when they were committed were cut back to two years after October 1, 2001 (e.g., if incest were committed in December, 2000, the civil statute of limitations in effect in 2000 would have expired in December 2003, but, due to the change effective October 1, 2001, the statute of limitations expired in December 2002.)

Representative Kevin Meyer

May 1, 2003

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I do not know what a court would decide in the situations described above, but, to the extent the constitution permits, a retroactive provision would prevent a defendant from making those arguments.

If you have additional questions, please give me a call.

PF:mdr

03-097.mdr