

SB

265

HFIN

FILE

HOUSE COMMITTEE REPC T

4.9.08

(11)

Date Referred to Committee: March 31, 2008

FURTHER REFERRALS:

Date of Committee Action: 4/8/08

RULES

The FINANCE Committee considered:

CSSB 265(FIN)

CS FOR SENATE BILL NO. 265(FIN)

SEX OFFENDERS & CHILD KIDNAPPERS: PFD

"An Act relating to the payment of permanent fund dividends to certain individuals required to register as sex offenders or child kidnappers; relating to execution upon permanent fund dividends by civilian process servers using electronic procedures; amending Rule 89, Alaska Rules of Civil Procedure; and providing for an effective date."

Recommends it be replaced with HCS or CS for CS SB 265 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts:
 ADM
 CED
 CI
 CK
 EED
 DEC
 DFG
 GOV
 HSS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CDR			✓	
LAW		✓		
HSS				✓
HSS				✓
DPS	1	✓		

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS	2	✓		
ADM	5			✓
REV	6	✓		

Signing with recommendations	Printed Last Name	DT (8)	DNP	NR (3)	AM
<i>[Signature]</i>	Hawker	✓			
Mary Nelson	NELSON	✓			
<i>[Signature]</i>	CRAWFORD	✓			
<i>[Signature]</i>	Squire			X	
<i>[Signature]</i>	KELLY			X	
<i>[Signature]</i>	Gora	✓			
Foster	Foster	✓			
<i>[Signature]</i>	Thomas			✓	
<i>[Signature]</i>	STOTER	X			
Chair: K. Meyer	Meyer	X			
Chair: <i>[Signature]</i>	Chenault	X			

CO
CO

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB265HCS CS(FIN)-DOC-PM-04-09-08
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: Corrections
Title "An Act relating to furnishing or delivering alcoholic beverages
to persons under 21 years of age; relating to shipping" RDU Population Management
Sponsor Rules Committee Component Institution Director's Office
Requester House Finance Component Number 524

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	*	*	*	*	*	*
Travel	0.0	0.0	*	*	*	*	*	*
Contractual	0.0	0.0	*	*	*	*	*	*
Supplies	0.0	0.0	*	*	*	*	*	*
Equipment	0.0	0.0	*	*	*	*	*	*
Land & Structures	0.0	0.0	*	*	*	*	*	*
Grants & Claims	0.0	0.0	*	*	*	*	*	*
Miscellaneous	0.0	0.0	*	*	*	*	*	*
TOTAL OPERATING	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	0.0	0.0	*	*	*	*	*	*
1003 GF Match	0.0	0.0	*	*	*	*	*	*
1004 GF	0.0	0.0	*	*	*	*	*	*
1005 GF/Program Receipts	0.0	0.0	*	*	*	*	*	*
1037 GF/Mental Health	0.0	0.0	*	*	*	*	*	*
Other Interagency Receipts	0.0	0.0	*	*	*	*	*	*
TOTAL	0.0	0.0	*	*	*	*	*	*

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time	0.0	0.0	*	*	*	*	*	*
Part-time	0.0	0.0	*	*	*	*	*	*
Temporary	0.0	0.0	*	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections is unable to determine the fiscal impacts of passage of this legislation. The department cannot estimate the total number of actual violations that would occur since data is only looking at the previous five years (calendar year 2002 to 2007).

From calendar year 2002 to 2007 the department's data reflects:

Section 3: There may be an impact on the department. There have been four offenders with three convictions for transporting or bringing alcoholic beverages into a municipality or established village in violation of AS 04.11.499(a).

(See page 2)

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Dwayne Peebles, Deputy Commissioner
Department of Corrections

Phone (907) 465-3339
Date/Time 4/9/08 12:45 PM
Date 4/9/2008

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. SB265HCS CS(FIN)-DOC-PM-04-09-08

ANALYSIS CONTINUATION

Below represents the departments estimated calculation for incarcerating these offenders.

Anticipated offender growth impact :						
Offender population is based on the one offender per year (average sentence length of 18 months)						
	2009	2010	2011	2012	2013	2014
Total Annual Offender Count :	0	1	1	1	1	1
Total 6 Months Offender Count :			1	1	1	1
Increased Mandays :	0	365	547	547	547	547
Estimated annual costs :						
Blended Daily bed rate w/o annual adjustment :	\$85 00					
Annual Incarceration Costs	\$0	\$31,025	\$46,495	\$46,495	\$46,495	\$46,495
Probation Officer Costs :	\$0	\$0	\$0	\$0	\$0	\$0
Total Annual Costs :	\$0	\$31,025	\$46,495	\$46,495	\$46,495	\$46,495

Section 10: May have a small impact on the department. Department data shows there have been 31 convictions for Criminally Negligent Burning (AS11.46.430). None of those convictions have prior convictions for arson (AS11.46.400-11.46.410), criminally negligent burning (AS11.46.430) or AS 41.15.150.

Sections 15, 16 & 17: These sections will have an impact on the department. At this time department is unable to estimate the number of individuals who would be committed to the custody of the department as a result of these sections.

The department would calculate costs associated with the potential increase in mandays based on a blended rate (average of in-state and out-of-state daily bed rates) of \$85.00 per day. One additional Adult Probation Officer position with support costs would also be necessary when the total crime legislation increases the offender population by 80. The estimated cost for each required position is \$85,600.

FISCAL NOTE

#17

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HCS CS SB 265 (FIN)
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Behavioral Health
 Component: Behavioral Health Administration

ID(File name) SB265HCSCS(FIN)-DHSS-BHA-04-08-08
 Title: SEX OFFENDERS & CHILD KIDNAPPERS: PFD
 Sponsor: MCGUIRE
 Requester: HOUSE FINANCE

Component No. 2665

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information				
	Required						
OPERATING EXPENDITURES	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (0)							

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other(Specify Type-do not abbreviate)							
Other(Specify Type-do not abbreviate)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

Section 26 of this bill will have no significant fiscal impact on Behavioral Health. The activities and strategies outlined in the bill, while significantly assisting Behavioral Health in the work of preventing and treating alcohol use, abuse and dependency among Alaska citizens, will not directly impact DHSS fiscal needs or operating budget.

Prepared by: Melissa Stone, Director
 Division: Behavioral Health
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 269-3410
 Date/Time: 04/08/2008
 Date: 04/08/2008

FISCAL NOTE

#18

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HCS CS SB 265 (FIN)
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Behavioral Health
 Component: Alaska Psychiatric Institute

ID (File name) SB265HCSCS(FIN)-DHSS-04-08-08
 Title SEX OFFENDERS & CHILD KIDNAPPERS: PFD
 Sponsor MCGUIRE
 Requester HOUSE FINANCE

Component No. 311

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information				
	Required						
OPERATING EXPENDITURES	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (0)							

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other (Specify Type-do not abbreviate)							
Other (Specify Type-do not abbreviate)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The procedure for protecting the public from a person who, as a result of mental disease or defect, is incompetent to be tried for a crime is insufficient. This bill would address the gaps in two ways. It requires a person found incompetent to be referred to the commissioner of the Department of Health and Social Services for evaluation and treatment. It would also require 10 days notice to the prosecuting authority by the professional in charge of the person's care before the person may be released.

Sections 15, 16, 17, 30 and 31 of this bill will not have a significant fiscal impact on DHSS. However, if the current trend of increasing admissions to the Alaska Psychiatric Institute continues, it will cause capacity issues that may have to be addressed at a later date.

Prepared by: Melissa Stone, Director
 Division: Behavioral Health
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 269-3410
 Date/Time: 04/08/2008
 Date: 04/08/2008

FISCAL NOTE

HB 9

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: SB265HCSCS(FIN)-LAW-CRIM-04-09-(
 Bill Version: SB265HCSCS(FIN)
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to the payment of PFD's to sex offenders RDU CRIMINAL
or child kidnapers Component Criminal Appeals/Special Litigation
 Sponsor SENATOR(S) MCGUIRE
 Requester HOUSE FINANCE Component Number 2203

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	182.0	0.0	182.0	182.0	182.0	182.0	182.0	182.0
Travel	10.5	0.0	10.5	10.5	10.5	10.5	10.5	10.5
Contractual	7.5	0.0	7.5	7.5	7.5	7.5	7.5	7.5
Supplies								
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	200.0	0.0	200.0	200.0	200.0	200.0	200.0	200.0

CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	200.0	0.0	200.0	200.0	200.0	200.0	200.0	200.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	200.0	0.0	200.0	200.0	200.0	200.0	200.0	200.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	2	-	2	2	2	2	2
Part time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)
 See attached analysis.

Prepared by: Betty Martin, Administrative Services Division Phone (907) 465-3673
 Division Administrative Services Date/Time 4/9/08 11:30 AM
 Approved by: Talis Colberg, Attorney General Date 4/9/2008
Department of Law

FISCAL NOTE

ANALYSIS CONTINUATION

HCS CSSB 265(FIN) requires that the permanent fund dividend of a person required to register as a sex offender or child kidnapper be delayed until the person submits proof that the person has fully complied with the law addressing sex offender registration.

The bill also makes several changes in the criminal law regarding bootlegging, furnishing alcohol to a minor, search warrants, arson, criminally negligent burning, post-conviction relief applications, and how persons charged with a crime but found incompetent to be tried for the crime are treated.

The bill expands the reporting requirements for persons who develop photographs and repair computers who, in the course of their work, find images of child pornography.

The bill will expand the court's jurisdiction to issue search warrants outside the state and is designed to increase the number of cross-border crimes that can be prosecuted. It is anticipated that this will be especially true in computer-aided crimes and child pornography.

Internet crimes against children, like child pornography, child enticement, identity theft require specialized skills that prosecutors generally do not learn in law school. As specialized investigative units are developed, the district attorneys prosecuting these crimes need similar skills to those of the investigators. Special skills in communicating complex technical information to jurors is also important.

A new attorney to specialize in this work, as well as 1 Law Office Assistant, would work in the Office of Special Prosecutions and Appeals and would assist in the prosecution of Internet crimes throughout the state.

FISCAL NOTE

#110

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HCS CSSB 265 (FIN)
() Publish Date: _____

Identifier (file name): SB265HCSCS(FIN)-DPS-AST-4-8-08 Dept. Affected: Public Safety
Title: Omnibus Crime Bill RDU: Alaska State Troopers
Component: Alaska Bureau of Investigation
Sponsor: Senator McGuire
Requester: House Finance Committee Component Number: 2744

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	146.0		146.0	146.0	146.0	146.0	146.0
Travel	18.0		18.0	18.0	18.0	18.0	18.0
Contractual	70.0		70.0	70.0	70.0	70.0	70.0
Supplies	4.0		4.0	4.0	4.0	4.0	4.0
Equipment	10.0		10.0	10.0	10.0	10.0	10.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	248.0	0.0	248.0	248.0	248.0	248.0	248.0

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	248.0		248.0	248.0	248.0	248.0	248.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	248.0	0.0	248.0	248.0	248.0	248.0	248.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary	2		2	2	2	2	2

ANALYSIS: (Attach a separate page if necessary)

Crime in Alaska is a significant issue. Statewide Crime Data for the year 2000 indicates a ranking of 22nd nationally. Violent crime statistics indicate a rate of 10th in the nation. Alaska is ranked 1st nationally in the category of sexual assault and sexual abuse. Alaska also has the highest per capita use of Internet resources. In Alaska, child enticement and child pornography occur in both urban and rural environments. To effectively respond to these crimes will require a significant shift in strategies to include embracing technology; training personnel to respond to the issues; and integrating resource groups to maximize the personnel and resources available to meet this need.

Prepared by: Lt. Rodney Dial
Division: Alaska State Troopers
Approved by: Walt Monegan, Commissioner
Department of Public Safety

Phone: 247-4480
Date/Time: 4/9/08 12:05 PM
Date: 4/8/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

The Alaska Bureau of Investigation (ABI) is the only agency that has statewide law enforcement authority and the mandate to assist smaller rural agencies in the investigation of crime, including computer related crime.

As a component to this mission, ABI works closely local, state, and federal agencies to coordinate efforts in safeguarding our youth. This fiscal note focuses on strategies to address the five critical components of effective response to Internet crimes against children: investigation; forensics; prosecution; building capacity; and public education.

Qualified personnel are required. Internet crimes against children, like child enticement, child pornography, identity theft, or any other ways of injuring young people, are the type of offenses which require specialized skills by both investigators and prosecutors. Knowledge of hardware, software, connectivity, and identifying the offender are specialized areas of knowledge and skills. The legal issues are also unique. Specialized knowledge of the use of search warrants and interstate subpoenas are necessary.

Specialized equipment and on-going training to exceed projected need must be maintained. Computer technology is constantly evolving and equipment and training must keep up or surpass the opposition's. Much of this forensic training is only available outside the state, which increases the cost.

Rapid and accurate intelligence gathering, dissemination, and information sharing, not only among law enforcement, but also through public education on how to safeguard child Internet users as well as how to report Internet crimes against children is vital.

Due to passage of Amendment 6 in the House Finance Committee that pertains to mandatory reporting to law enforcement agencies by a person providing film, photo, or visual or printed matter processing, production, or finishing services or computer installation, repair, or other services, or Internet or cellular telephone services who, in the process of providing these services observes a film, photo, picture, computer file, image or other matter that depicts material enumerated in AS 11.41.455(a), a fiscal impact does occur.

Due to the severity of these crimes against children and the ease in which child pornography is viewed and distributed a special investigator trained to handle Internet sex crimes against children investigations and a computer technician positions are necessary.

This fiscal note includes funding for one criminal justice technician and one Alaska State Trooper investigator. Both employees will be classified as long-term / non-permanent positions. The reason for the non-permanent status is that experienced retired investigators can be hired and dedicated to this task far faster than hiring and training new employees with no previous experience. Also, the department is facing recruitment difficulties that necessitate the need to make these positions long term non-permanent at this time.

adopted
N/O

4/8/08

25-LS1449\W
Luckhaupt
4/6/08

HOUSE CS FOR CS FOR SENATE BILL NO. 265()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS MCGUIRE, Dyson, Therriault, Bunde, Thomas, Stedman, Wielechowski, Ellis, Elton

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to furnishing or delivering alcoholic beverages to persons under 21
2 years of age; relating to shipping, sending, transporting, or bringing alcohol to a local
3 option area and providing alcohol to others in the local option area, including penalties
4 for violations; relating to reports of alcohol violations by minors; relating to the
5 payment of permanent fund dividends to certain individuals required to register as sex
6 offenders or child kidnappers; relating to certain persons who lend money on
7 secondhand articles; relating to arson and criminally negligent burning; relating to
8 defenses for the detention of persons suspected of committing concealment of
9 merchandise or theft; relating to controlled substances; relating to the determination of
10 time of a conviction; relating to issuance of search warrants; relating to persons found
11 incompetent to stand trial concerning criminal conduct; relating to probation for certain
12 offenses; relating to restitution for fish and game violations; relating to aggravating

1 factors at sentencing; relating to post-conviction relief proceedings; relating to criminal
 2 extradition authority of the governor; removing the statutory bar to prosecution of
 3 certain crimes; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to
 4 execution of warrants, and Rule 35.1, Alaska Rules of Criminal Procedure; and
 5 providing for an effective date."

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

7 * Section 1. AS 04.16.051(a) is amended to read:

8 (a) A person may not furnish or deliver an alcoholic beverage to a person
 9 under the age of 21 years. This subsection does not apply to a licensee or an agent
 10 or employee of a licensee while working on licensed premises.

11 * Sec. 2. AS 04.16.052 is amended to read:

12 Sec. 04.16.052. **Furnishing of alcoholic beverages to persons under the age**
 13 **of 21 by licensees.** A licensee or an agent or employee of the licensee may not with
 14 criminal negligence

15 (1) allow another person to sell, barter, or give an alcoholic beverage
 16 to a person under the age of 21 years within licensed premises;

17 (2) allow a person under the age of 21 years to enter and remain within
 18 licensed premises except as provided in AS 04.16.049;

19 (3) allow a person under the age of 21 years to consume an alcoholic
 20 beverage within licensed premises;

21 (4) allow a person under the age of 21 years to sell or serve alcoholic
 22 beverages;

23 (5) while working on licensed premises, furnish or deliver alcoholic
 24 beverages to a person under the age of 21 years.

25 * Sec. 3. AS 04.16.200(e) is amended to read:

26 (e) A person who sends, transports, or brings alcoholic beverages into a
 27 municipality or established village in violation of AS 04.11.499(a) is, upon conviction,

28 (1) except as provided in (3) of this subsection, guilty of a class A
 29 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters

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of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

(2) guilty of a class C felony if the quantity of alcoholic beverages is 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages; or

(3) guilty of a class C felony if the quantity of alcoholic beverages is less than 10 and one-half liters of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages and the person has been previously convicted under this subsection or (b) of this section two or more times within 10 years of the date of the present offense.

* Sec. 4. AS 04.16.200 is amended by adding new subsections to read:

(g) Upon conviction of a class A misdemeanor under (e)(1) of this section, the court

(1) shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours and a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (h) of this section;

(D) not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (h) of this section;

(E) not less than 240 days and a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (h) of this section;

(F) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (h) of this section;

(2) may not

(A) suspend execution of sentence or grant probation except on

- 1 the condition that the person
- 2 (i) serve the minimum imprisonment under (1) of this
- 3 subsection; and
- 4 (ii) pay the minimum fine required under (1) of this
- 5 subsection; or
- 6 (B) suspend imposition of sentence.
- 7 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this
- 8 section, the court
- 9 (1) shall impose a fine of not less than \$10,000 and a minimum
- 10 sentence of imprisonment of
- 11 (A) 120 days if the person has been previously convicted once;
- 12 (B) 240 days if the person has been previously convicted two
- 13 times;
- 14 (C) 360 days if the person has been previously convicted three
- 15 or more times;
- 16 (2) may not
- 17 (A) suspend execution of sentence or grant probation except on
- 18 the condition that the person
- 19 (i) serve the minimum imprisonment under (1) of this
- 20 subsection; and
- 21 (ii) pay the minimum fine required under (1) of this
- 22 subsection; or
- 23 (B) suspend imposition of sentence.
- 24 (i) In (g) of this section, "previously convicted" means having been convicted,
- 25 within the 10 years preceding the date of the present offense, of an offense under (b)
- 26 or (c) of this section or a law or ordinance of another jurisdiction having elements
- 27 similar to those offenses.
- 28 (j) In (h) of this section, "previously convicted" means having been convicted,
- 29 within the 10 years preceding the date of the present offense, of a felony offense under
- 30 (b) or (c) of this section or a law or ordinance of another jurisdiction having elements
- 31 similar to those felony offenses.

1 (k) The court shall consider the date of a previous conviction as
2 occurring on the date that sentence is imposed for the prior offense.

3 * Sec. 5. AS 08.76.010 is amended by adding a new subsection to read:

4 (b) A person who lends money on secondhand articles under (a) of this section
5 and is located in a municipality that has a population of over 5,000 shall also maintain
6 an electronic record that provides the information required by (a)(1) and (4) of this
7 section for the secondhand articles on which the person lends money. The person shall
8 submit the electronic record as required by the municipal law enforcement agency.

9 * Sec. 6. AS 08.76.020 is amended to read:

10 Sec. 08.76.020. Manner of recording entry. The entries in the book and the
11 electronic record required by AS 08.76.010 shall appear in chronological order and,
12 when made in a book, in ink or indelible pencil. Blank lines may not be left between
13 entries. Objections, alterations, or erasures may not be made. Corrections shall be
14 made by drawing a line [IN INK] through the entry without destroying its legibility,
15 and, when made in a book, the line shall be drawn in ink. The book shall be open
16 to the inspection of a peace officer at reasonable times.

17 * Sec. 7. AS 11.46.230(a) is amended to read:

18 (a) In a civil or criminal action upon the complaint of a person who has been
19 detained in or in the immediate vicinity of a commercial establishment for the purpose
20 of investigation or questioning as to the ownership of merchandise, it is a defense that

21 (1) the person was detained in a reasonable manner and for not more
22 than a reasonable time to permit investigation or questioning by a peace officer or by
23 the owner of the commercial establishment or the owner's agent; and

24 (2) the peace officer, owner, or owner's agent had probable cause to
25 believe that the person detained was committing or attempting to commit concealment
26 of merchandise or theft from the commercial establishment.

27 * Sec. 8. AS 11.46.295 is amended to read:

28 Sec. 11.46.295. Prior convictions. For purposes of considering prior
29 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
30 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
31 AS 11.46.220(c), a conviction for an offense under another law or ordinance with

1 similar elements is a conviction of an offense having elements similar to those of an
2 offense defined as such under Alaska law at the time the offense was committed. The
3 court shall consider the date of a prior conviction as occurring on the date that
4 sentence is imposed for the prior offense.

5 * Sec. 9. AS 11.46.410(a) is amended to read:

6 (a) A person commits the crime of arson in the second degree if the person
7 knowingly [INTENTIONALLY] damages a building by starting a fire or causing an
8 explosion.

9 * Sec. 10. AS 11.46 is amended by adding a new section to read:

10 Sec. 11.46.427. Criminally negligent burning in the first degree. (a) A
11 person commits the crime of criminally negligent burning in the first degree if the
12 person

13 (1) violates AS 11.46.430; and

14 (2) within the preceding 10 years, has been convicted of violating
15 AS 11.46.400 - 11.46.430 or AS 41.15.150 or a law or ordinance of this or another
16 jurisdiction with elements similar to those offenses.

17 (b) Criminally negligent burning in the first degree is a class C felony.

18 * Sec. 11. AS 11.46.430 is amended to read:

19 Sec. 11.46.430. Criminally negligent burning in the second degree. (a) A
20 person commits the crime of criminally negligent burning in the second degree if
21 with criminal negligence the person damages property of another by fire or explosion.

22 (b) Criminally negligent burning in the second degree is a class A
23 misdemeanor.

24 * Sec. 12. AS 11.71.170(b) is amended by adding new paragraphs to read:

25 (30) carisprodol;

26 (31) zolpidem;

27 (32) zopiclone.

28 * Sec. 13. AS 12.35.010(a) is amended to read:

29 (a) A judicial officer may issue a search warrant upon a showing of probable
30 cause, supported by oath or affirmation, and particularly describing the place to be
31 searched and the thing to be seized. The court may issue a search warrant for a

1 place or property located either in the state or outside the state.

2 * Sec. 14. AS 12.35.015(a) is amended to read:

3 (a) A judicial officer may issue a search warrant upon the sworn oral
4 testimony of a person communicated by telephone or other appropriate means, or
5 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER
6 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

7 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT OR
8 TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
9 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
10 WARRANT; AND

11 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
12 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH AN
13 ONGOING INVESTIGATION].

14 * Sec. 15. AS 12.47.110(a) is amended to read:

15 (a) When the trial court determines by a preponderance of the evidence, in
16 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is
17 unable to understand the proceedings against the defendant or to assist in the
18 defendant's own defense, the court shall order the proceedings stayed, except as
19 provided in (d) of this section shall, [AND MAY] commit a [THF] defendant
20 charged with a felony and may commit a defendant charged with any other crime
21 to the custody of the commissioner of health and social services or the commissioner's
22 authorized representative for further evaluation and treatment until the defendant is
23 mentally competent to stand trial, or until the pending charges against the defendant
24 are disposed of according to law, but in no event longer than 90 days.

25 * Sec. 16. AS 12.47.110(b) is amended to read:

26 (b) On or before the expiration of the initial 90-day period of commitment, the
27 court shall conduct a hearing to determine whether or not the defendant remains
28 incompetent. If the court finds by a preponderance of the evidence that the defendant
29 remains incompetent, the court may recommit the defendant for a second period of 90
30 days. The court shall determine at the expiration of the second 90-day period whether
31 the defendant has become competent. If, at the expiration of the second 90-day period,

1 the court determines that the defendant continues to be incompetent to stand trial, the
2 charges against the defendant shall be dismissed without prejudice, and continued
3 commitment of the defendant shall be governed by the provisions relating to civil
4 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
5 crime involving force against a person and the court finds that the defendant presents a
6 substantial danger of physical injury to other persons and that there is a substantial
7 probability that the defendant will regain competency within a reasonable period of
8 time, in which case the court may extend the period of commitment for an additional
9 six months. If the defendant remains incompetent at the expiration of the additional
10 six-month period, the charges shall be dismissed without prejudice, and continued
11 [EITHER CIVIL] commitment proceedings shall be governed by the provisions
12 relating to civil commitment under AS 47.30.700 - 47.30.915 [INSTITUTED OR
13 THE COURT SHALL ORDER THE RELEASE OF THE DEFENDANT]. If the
14 defendant remains incompetent for five years after the charges have been dismissed
15 under this subsection, the defendant may not be charged again for an offense arising
16 out of the facts alleged in the original charges, except if the original charge is a class A
17 felony or unclassified felony.

18 * Sec. 17. AS 12.47.110 is amended by adding a new subsection to read:

19 (c) A defendant charged with a felony and found to be incompetent to proceed
20 under this section is rebuttably presumed to be mentally ill and to present a likelihood
21 of serious harm to self or others in proceedings under AS 47.30.700 - 47.30.915. In
22 evaluating whether a defendant is likely to cause serious harm, the court may consider
23 as recent behavior the conduct with which the defendant was originally charged.

24 * Sec. 18. AS 12.55.090(a) is amended to read:

25 (a) Probation may be granted whether the offense under AS 11 or AS 16 or
26 the crime is punishable by fine or imprisonment or both. If an offense under AS 11
27 or AS 16 or a crime is punishable by both fine and imprisonment, the court may
28 impose a fine and place the defendant on probation as to imprisonment. Probation may
29 be limited to one or more counts or indictments, but, in the absence of express
30 limitation, shall extend to the entire sentence and judgment.

31 * Sec. 19. AS 12.55.155(c)(8) is amended to read:

1 (8) the defendant's prior criminal history includes conduct involving
2 aggravated assaultive behavior or repeated instances of assaultive behavior; in this
3 paragraph, "aggravated assaultive behavior" means assault that is a felony
4 under AS 11.41, or a similar provision in another jurisdiction;

5 * Sec. 20. AS 12.55.155(f) is amended to read:

6 (f) If the state seeks to establish a factor in aggravation at sentencing

7 (1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of this
8 section, or if the defendant seeks to establish a factor in mitigation at sentencing,
9 written notice must be served on the opposing party and filed with the court not later
10 than 10 days before the date set for imposition of sentence; the factors in aggravation
11 listed in this paragraph and factors in mitigation must be established by clear and
12 convincing evidence before the court sitting without a jury; all findings must be set out
13 with specificity;

14 (2) other than one listed in (1) of this subsection, the factor shall be
15 presented to a trial jury under procedures set by the court, unless the defendant waives
16 trial by jury, stipulates to the existence of the factor, or consents to have the factor
17 proven under procedures set out in (1) of this subsection; a factor in aggravation
18 presented to a jury is established if proved beyond a reasonable doubt; written notice
19 of the intent to establish a factor in aggravation must be served on the defendant and
20 filed with the court

21 (A) 20 days before trial, or at another time specified by the
22 court;

23 (B) within 48 hours, or at a time specified by the court, if the
24 court instructs the jury about the option to return a verdict for a lesser included
25 offense; or

26 (C) five days before entering a plea that results in a finding of
27 guilt, or at another time specified by the court.

28 * Sec. 21. AS 12.70.280(2) is amended to read:

29 (2) "governor" includes

30 (A) a person performing the functions of governor by authority
31 of the law of this state; and

1 (B) the lieutenant governor or the head of a principal
2 department in the executive branch appointed by the governor to act on
3 behalf of the governor in performing extradition duties under this
4 chapter; the appointment shall be in writing and filed with the lieutenant
5 governor;

6 * Sec. 22. AS 12.72.020(a) is amended to read:

7 (a) A claim may not be brought under AS 12.72.010 or the Alaska Rules of
8 Criminal Procedure if

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

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

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

15 (A) if the claim relates to a conviction, one year [TWO
16 YEARS] after the entry of the judgment of the conviction or, if the conviction
17 was appealed, one year after the court's decision is final under the Alaska
18 Rules of Appellate Procedure;

19 (B) if the claim relates to a court revocation of probation, one
20 year [TWO YEARS] after the entry of the court order revoking probation or, if
21 the order revoking probation was appealed, one year after the court's decision
22 is final under the Alaska Rules of Appellate Procedure;

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

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

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

30 * Sec. 23. AS 12.72.020(b) is amended to read:

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

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

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

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

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

10 (A) was not known within

11 (i) one year [TWO YEARS] after entry of the judgment
12 of conviction if the claim relates to a conviction;

13 (ii) one year [TWO YEARS] after entry of a court
14 order revoking probation if the claim relates to a court's revocation of
15 probation; or

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

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

20 (C) is not impeachment evidence; and

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

23 * Sec. 24. AS 12.72.020 is amended by adding a new subsection to read:

24 (d) The court may not consider a substantive claim in an application brought
25 under AS 12.72.010 or the Alaska Rules of Criminal Procedure until the court has first
26 determined that

27 (1) the application is timely; and

28 (2) except for an application described in AS 12.72.025 or allowed
29 under (c) of this section, no previous application has been filed.

30 * Sec. 25. AS 16.05.925(b) is amended to read:

31 (b) In addition to a penalty imposed under (a) of this section or any other

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penalty for violation of this title or a regulation adopted under this title, a person who is convicted of unlawfully taking an animal listed in this subsection may be ordered by the court to pay restitution to the state in the amount set out in this subsection for each animal unlawfully taken:

- (1) Bear, black \$ 600
- (2) Bear, brown or grizzly 1,300
- (3) Bison 1,300
- (4) Caribou 850
- (5) Deer 400
- (6) Elk 800
- (7) Goat 800
- (8) Moose 1,000
- (9) Musk oxen 3,000
- (10) Sheep 1,100
- (11) Wolf 500
- (12) Wolverine 500.

* Sec. 26. AS 28.15.191(a) is amended to read:

(a) A court that convicts a person of an offense under this title or a regulation adopted under this title, or another law or regulation of this state [,] or a municipal ordinance that regulates the driving of vehicles, or a violation of AS 04.16.050 shall forward a record of the conviction to the department within five working days. A conviction of a standing or parking offense need not be reported.

* Sec. 27. AS 28.35.028(a) is amended to read:

(a) Notwithstanding another provision of law, with the consent of the state and the defendant, the court may elect to proceed in a criminal case under AS 04.16.200(b) or (c), AS 28.35.030, or 28.35.032, including the case of a defendant charged with violating the terms of probation, under the procedure provided in this section and order the defendant to complete a court-ordered treatment program. The state may not consent to a referral under this subsection unless the state has consulted with the victim and explained the process and consequences of the referral to the victim. A court may not elect to proceed under this section if the defendant has previously

1 participated in a court-ordered treatment program under this section two or more
2 times.

3 * Sec. 28. AS 43.23 is amended by adding a new section to read:

4 **Sec. 43.23.021. Delayed payment of certain dividends.** (a) Notwithstanding
5 other provisions regarding the payment of permanent fund dividends, if an individual
6 is required to register as a sex offender or child kidnapper under AS 12.63 and has not
7 registered or has not completed the required periodic verifications or notices required
8 under AS 12.63, payment of the dividend for that individual shall be delayed.

9 (b) If payment of a dividend is delayed, the department shall notify the
10 individual in writing of the delayed payment status, explain the requirements of this
11 section, and request proof of registration and compliance with the verifications and
12 notices required under AS 12.63. The dividend may not be paid unless, within one
13 year after the notification, the department determines that the individual has registered
14 and is in compliance with the verifications and notices required under AS 12.63.

15 (c) Notwithstanding other provisions, a permanent fund dividend that has not
16 become payable to an individual under this section is not subject to levy, execution,
17 garnishment, attachment, or any other remedy for the collection of debt until that
18 dividend becomes payable or is paid to the individual.

19 (d) If an individual for whom payment of a permanent fund dividend has been
20 delayed but remains payable under (b) of this section dies before the dividend is paid
21 or payable, the department shall pay the dividend to a personal representative of the
22 individual's estate.

23 (e) The department shall include notice with the dividend application form of
24 the requirements of (a) and (b) of this section.

25 * Sec. 29. AS 43.23.025(a) is amended to read:

26 (a) By October 1 of each year, the commissioner shall determine the value of
27 each permanent fund dividend for that year by

28 (1) determining the total amount available for dividend payments,
29 which equals

30 (A) the amount of income of the Alaska permanent fund
31 transferred to the dividend fund under AS 37.13.145(b) during the current year;

1 (B) plus the unexpended and unobligated balances of prior
2 fiscal year appropriations that lapse into the dividend fund under
3 AS 43.23.045(d);

4 (C) less the amount necessary to pay prior year dividends from
5 the dividend fund in the current year under AS 43.23.005(h), 43.23.021, and
6 43.23.055(3) and (7) [UNDER AS 43.23.055(3) AND (7)];

7 (D) less the amount necessary to pay dividends from the
8 dividend fund due to eligible applicants who, as determined by the department,
9 filed for a previous year's dividend by the filing deadline but who were not
10 included in a previous year's dividend computation;

11 (E) less appropriations from the dividend fund during the
12 current year, including amounts to pay costs of administering the dividend
13 program and the hold harmless provisions of AS 43.23.075;

14 (2) determining the number of individuals eligible to receive a
15 dividend payment for the current year and the number of estates and successors
16 eligible to receive a dividend payment for the current year under AS 43.23.005(h); and

17 (3) dividing the amount determined under (1) of this subsection by the
18 amount determined under (2) of this subsection.

19 * Sec. 30. AS 47.30.780 is amended to read:

20 Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,
21 the [THE] professional person in charge shall at any time discharge a respondent on
22 the ground that the respondent is no longer gravely disabled or likely to cause serious
23 harm as a result of mental illness. A certificate to this effect shall be sent to the court,
24 which shall enter an order officially terminating the involuntary commitment.

25 * Sec. 31. AS 47.30.780 is amended to add a new subsection to read:

26 (b) The professional person in charge shall give the prosecuting authority 10
27 days' notice before discharging a respondent who was committed after having been
28 found incompetent to proceed under AS 12.47.110.

29 * Sec. 32. The uncodified law of the State of Alaska enacted in sec. 36(c), ch. 24, SLA
30 2007, is amended to read:

31 (c) AS 12.72.025, enacted by sec. 25, ch. 24, SLA 2007 [OF THIS ACT],

1 applies to offenses committed before, on, or after the effective date of sec. 25, ch. 24,
2 SLA 2007 [OF THIS ACT]. A person whose application for post-conviction relief was
3 denied before the effective date of sec. 25, ch. 24, SLA 2007 [OF THIS ACT] has
4 until July 1, 2008, to file a claim described in AS 12.72.025. This subsection does not
5 authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal
6 Procedure that is not otherwise available under AS 12.72, the Alaska Rules of
7 Criminal Procedure, or other provision of law.

8 * Sec. 33. AS 12.35.015(f) is repealed.

9 * Sec. 34. AS 11.71.310 and AS 12.20.010 are repealed.

10 * Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of
13 Criminal Procedure, is amended to read:

14 (b) **Execution and Return with Inventory.** The warrant shall be executed
15 and returned within 30 [10] days after its date of issuance. However, upon sworn
16 application made before the expiration of the initial 30 [10] day period or any
17 subsequent extension, the court may for good cause extend the execution period for a
18 reasonable time not to exceed 30 [10] days. Good cause includes protecting the
19 confidentiality of an ongoing investigation and protecting a person working with
20 law enforcement authorities on an investigation. The officer taking property under
21 the warrant

22 (1) shall give to the person from whom or from whose premises the
23 property was taken a copy of the warrant, a copy of the supporting affidavits, and
24 receipt for the property taken, or

25 (2) shall leave the copies and the receipt at the place from which the
26 property was taken.

27 The return shall be made promptly and shall be accompanied by a
28 written inventory of any property taken as a result of the search pursuant to or in
29 conjunction with the warrant. The inventory shall be made in the presence of the
30 applicant for the warrant and the person from whose possession or premises the
31 property was taken, if they are present, or in the presence of at least one credible

1 person other than the applicant for the warrant or the person from whose possession or
2 premises the property was taken, and shall be signed by the officer under the penalty
3 of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a
4 notary public. The magistrate or judge or the court to which the return is made shall
5 upon request deliver a copy of the inventory to the person from whom or from whose
6 premises the property was taken and to the applicant for the warrant.

7 * Sec. 36. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 INDIRECT COURT RULE AMENDMENT. The provisions of AS 12.72.020(a) and
10 (b), as amended by secs. 22 and 23 of this Act, and the provisions of AS 12.72.020(d), as
11 added by sec. 24 of this Act, have the effect of amending Rule 35.1, Alaska Rule of Criminal
12 Procedure, by restricting the authority of a court to hear certain applications, claims, or
13 proceedings for post-conviction relief and by prescribing a procedure for a court to determine
14 if an application, claim, or proceeding may be considered.

15 * Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. (a) Sections 1- 4, 9 - 12, 18 - 20, 25 - 27, and 34 of this Act apply
18 to an offense occurring on or after the effective date of this section. References to previous
19 convictions in secs. 3 and 4 of this Act apply to convictions occurring before, on, or after the
20 effective date of those sections.

21 (b) Section 8 of this Act applies to an offense occurring before, on, or after the
22 effective date of this section.

23 (c) Sections 13, 14, 33, and 35 of this Act apply to search warrants applied for on or
24 after the effective date of this section, regardless of whether the offense occurred before, on,
25 or after the effective date of this section.

26 (d) Sections 15 - 17, 30, and 31 of this Act apply to procedures occurring after the
27 effective date of this section, regardless of whether the offense occurred before, on, or after
28 the effective date of this section.

29 (e) Section 21 of this Act applies to applications for criminal extraditions submitted
30 on or after the effective date of this section, regardless of whether the offense occurred before,
31 on, or after the effective date of this section.

1 (f) Section 7 of this Act applies to offenses occurring and actions arising on or after
2 the effective date of this section.

3 (g) Sections 22 - 24 and 36 of this Act apply to applications submitted on or after the
4 effective date of this section.

5 * Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 RETROACTIVITY. Section 32 of this Act is retroactive to July 1, 2007.

8 * Sec. 39. Sections 32 and 38 of this Act take effect immediately under AS 01.10.070(c).

9 * Sec. 40. Sections 28 and 29 of this Act take effect January 1, 2009.

10 * Sec. 41. Except as provided in secs. 39 and 40 of this Act, this Act takes effect July 1,
11 2008.

Sections 1 and 2

Provide that a licensee or agent or employee of a licensee is not subject to prosecution for furnishing alcohol to a minor under AS 04.16.051. Rather, licensees and their agents would be subject to prosecution under AS 04.16.052, which would be a class A misdemeanor.

Section 3

Provides that a person who sends, transports, or brings alcoholic beverages into a municipality or established village that has prohibited the importation of alcohol, upon the third offense within 10 years is guilty of a class C felony.

Section 4

Provides a minimum sentence of imprisonment and fines for a conviction under AS 04.16.200(e) (1), if the person is not subject to the changes made in Section 3.

Sections 5 and 6

Requires a person who lends money on secondhand articles in a municipality with over 5,000 residents to maintain in electronic format, the date of the transaction and a description of the property.

Section 7

Allows a peace officer or owner or owner's agent of a commercial establishment to detain a person for a reasonable time if there is probable cause to believe the person has committed or attempted to commit theft from the property.

Section 8

Clarifies that when a theft offense is enhanced one level because the defendant has two prior thefts within five years of the new crime, a prior conviction occurs on the date that the defendant was sentenced for the theft.

Section 9

Changes the culpable mental state for the crime of Arson in the 2nd Degree

Section 10

Adopts a new crime-First Degree Criminally Negligent Burning in the 1st Degree. It applies to persons convicted a second time within a 10 year period of arson or criminally negligent burning. This crime is a class C felony.

Section 11

Conforms the current law-Criminally Negligent Burning- by making it second degree criminally negligent burning.

Section 12

Adds 3 controlled substances under Schedule IVA:

- Carisprodol-commonly called Soma and listed as a controlled substance in 17 states.
- Zolpidem-commonly called Ambien and listed as a Schedule IV substance in federal schedules.
- Zopiclone-commonly called Lunesta and listed as a Schedule IV substance in federal schedules

These prescription drugs have been widely abused, and have been found by law enforcement to be present in drivers who are impaired.

Section 13

Clarifies that a court may issue a search warrant for property located outside the state. The issue of a court's authority out of state has arisen in white collar investigations where the state seeks stored electronic information. Companies that store this information are willing to provide it if law enforcement presents a search warrant for the information. This will clarify that a court may issue a warrant to obtain the information.

Section 14

Allows a judicial officer to issue a search warrant over the telephone or other electronic means in all cases. Alaskans rely on the telephone and other electronic communication in the important affairs of their lives. Law enforcement should not have to drive or fly to a judicial officer for a search warrant when electronic means are available for the court to fairly evaluate the evidence.

Sections 15, 16, 17, 30 and 31

Will help avoid potentially dangerous situations where a person charged with a crime, but found incompetent to be tried for it, is released back into a community without adequate consideration of the danger the individual may present, and without notice of release to the prosecution.

It requires a person charged with a felony and found incompetent to be evaluated for commitment and treatment. If the defendant remains incompetent after one year (for persons charged with crimes involving force and presenting a substantial danger to others), the bill would require that civil commitment proceedings be considered.

The bill would also adopt a rebuttable presumption that a person charged with a felony but found incompetent to proceed is mentally ill and likely to present a danger to themselves or others. It allows the court to consider the conduct with which the person was charged in making this determination.

Before a person found incompetent to proceed may be released from the hospital, the professional authorizing the release must give at least 10 days notice to the prosecution. This notice will allow the prosecution time to reinstate charges if appropriate under the

circumstances, and also give law enforcement forewarning that the person will be returning to the community.

Section 18

Allows the court to impose probation on a person who is convicted of a violation under AS 11 and AS 16.

Section 19

Defines "aggravated assaultive behavior" as a felony assault under AS 11.41 or a similar provision in another jurisdiction.

Section 20

Provides that the aggravating factor-that a defendant convicted of a felony sex offense has engaged in sexual offense against the same or another victim-is a factor that may be proven to the court at sentencing rather than to the jury.

Section 21

Allows the Governor to delegate extradition authority responsibilities either to the Lieutenant Governor or the head of a principal department in the executive branch. The appointment must be in writing and filed with the Lieutenant Governor.

Sections 22 and 23

Provides that a person has one year to bring an application for post-conviction relief after the entry of judgment if no appeal from the conviction is taken and one year to bring an application for post-conviction relief after the entry of an order revoking probation.

Section 24

Requires a court to first decide whether an application for post-conviction relief is timely and no previous application has been filed, before considering a substantive claim in an application.

Section 25

Allows a court to order a person convicted of violating any law or regulation under Title 16 for the unlawful taking of game to pay restitution for the unlawful taking.

Section 26

Provides that a court that convicts a person for a violation of AS 04.16.050 (Possession, control, or consumption by persons under the age of 21) shall forward a record of the conviction to the Division of Motor Vehicles within five working days.

Section 27

Provides that the court may order a person charged under AS 04.16.200(b) or (c) to complete a court-ordered treatment program.

Sections 28 and 29

Requires that payment of the Permanent Fund Dividend, for a person who is required by law to register as a sex offender or child kidnapper, be delayed until the person submits proof that the requirements for sex offender registration have been met by the applicant for the dividend.

Section 32

Dispels a potential misunderstanding in a section of the applicability clause in HB 90, adopted last year.

Section 33

Repeals AS 12.35.015(f) to conform the amendment in Section 12 that allows a court to issue search warrants by telephone and other electronic means.

Section 34

Repeals AS 11.71.310 and AS 12.20.010, that prohibit prosecution by the state for violations of state law if the federal government has prosecuted the same act for violation of federal law. Although this situation does not occur often, it is important that Alaska has the authority to enforce its laws and protect its interests and its citizens.

Section 35

Changes a Court Rule to allow more time for the return with inventory of a search warrant.

Section 36

A Court Rule change reflecting the provisions relating to post-conviction relief contained in Sections 22, 23, and 24.

Section 37

Applicability section

Section 38

Retroactive section for Section 32.

Section 39

Immediate effective date for Sections 32 and 38

Section 40

January 1, 2009 effective date for Sections 28 and 29

Section 41

July 1, 2008 effective date for all other sections not stipulated in Sections 39 and 40.

withdrawn 4/8/08

25-LS1449\W.6
Luckhaupt
4/7/08

New # 1

AMENDMENT

Rep Meyer by request

OFFERED IN THE HOUSE

TO: HCS CSSB 265(), Draft Version "W"

1 Page 2, line 1, following "sentencing;":

2 Insert "relating to sex offenders and child kidnappers;"

3

4 Page 12, following line 16:

5 Insert a new bill section to read:

6 "* Sec. 26. AS 18.65.087(g) is amended to read:

7 (g) The department, at least quarterly, shall compile a list of those persons
8 with a duty to register under AS 12.63.010 who have failed to register, whose
9 addresses cannot be verified under (f) of this section, or who otherwise cannot be
10 located. The department shall

11 (1) post this list on the Internet and request the public's assistance in
12 locating these persons; and

13 (2) distribute the list to each law enforcement agency in the state."

14

15 Renumber the following bill sections accordingly.

16

17 Page 16, line 17:

18 Delete "Sections 1- 4, 9 - 12, 18 - 20, 25 - 27, and 34"

19 Insert "Sections 1- 4, 9 - 12, 18 - 20, 25, 27, 28, and 35"

20

21 Page 16, line 23:

22 Delete "Sections 13, 14, 33, and 35"

23 Insert "Sections 13, 14, 34, and 36"

1

2 Page 16, line 26:

3 Delete "Sections 15 - 17, 30, and 31"

4 Insert "Sections 15 - 17, 31, and 32"

5

6 Page 17, line 3:

7 Delete "Sections 22 - 24 and 36"

8 Insert "Sections 22 - 24 and 37"

9

10 Page 17, line 7:

11 Delete "Section 32"

12 Insert "Section 33"

13

14 Page 17, line 8:

15 Delete "Sections 32 and 38"

16 Insert "Sections 33 and 39"

17

18 Page 17, line 9:

19 Delete "Sections 28 and 29"

20 Insert "Sections 29 and 30"

21

22 Page 17, line 10:

23 Delete "secs. 39 and 40"

24 Insert "secs. 40 and 41"

Replaud 4/8/08

25-LS1449\W.1
Luckhaupt
4/7/08

AMENDMENT

OFFERED IN THE HOUSE

Rep Meyer By Request

TO: HCS CSSB 265(), Draft Version "W"

- 1 Page 13, line 14, following "AS 12.63.":
- 2 Insert "When the department notifies an individual under this subsection of a delayed
- 3 payment, the department shall also notify the Department of Public Safety of
- 4 (1) the delayed payment because of the individual's apparent lack of
- 5 compliance with AS 12.63; and
- 6 (2) the individual's contact information as listed on the application."

adopted 9/8/08

New AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER BY REQUEST

TO: HCS CS SB 265 (), Version 25-I.S1449\W

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Page 6, line 14

After "convicted"

Insert "on two separate occasions"

4/8/08 Replaud

AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER BY REQUEST

TO: HCS CS SB 265 (), Version 25-LS1449\W

- 1 Page 3, line 8
- 2 Delete "10"
- 3 Insert "15"
- 4
- 5 Page 4, line 25
- 6 Delete "10"
- 7 Insert "15"
- 8
- 9 Page 6, line 14
- 10 After "convicted"
- 11 Insert "on two separate occasions"
- 12
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Adopted 4/8/08

25-LS1449W.4
Cook
4/7/08

AMENDMENT 3

By Meyer By Request

OFFERED IN THE HOUSE

TO: HCS CSSB 265(), Draft Version "W"

1 Page 13, lines 15 - 18:

2 Delete all material and insert:

3 "(c) The permanent fund dividend of an individual for whom payment has
4 been delayed, but that remains payable under (b) of this section, is subject to levy,
5 execution, garnishment, attachment, or any other remedy for the collection of debt.
6 The department shall immediately pay that dividend, or the portion of it that has been
7 claimed by a debtor, as provided in AS 43.23.065 - 43.23.068."

SCV

Adopted 4/8/08

25-LS1449\W.3
Cook
4/7/08

AMENDMENT 4

Meyer

OFFERED IN THE HOUSE

TO: HCS CSSB 265(), Draft Version "W"

1 Page 1, line 6, following "kidnappers;":

2 Insert "relating to public notice requirements relating to amounts that would have
3 been paid as dividends to certain individuals required to register as sex offenders or
4 child kidnappers;"

6 Page 14, following line 18:

7 Insert a new bill section to read:

8 **** Sec. 30. AS 43.23.028(b) is amended to read:**

9 (b) To the extent that amounts appropriated for a fiscal year do not exceed the
10 total amount that would have been paid during the previous fiscal year to individuals
11 who were ineligible to receive dividends under AS 43.23.005(d) or under
12 AS 43.23.021(b) if they had been eligible, the notice requirements of (a)(3) of this
13 section do not apply to appropriations from the dividend fund to

14 (1) the crime victim compensation fund established under
15 AS 18.67.162 for payments to crime victims;

16 (2) the council on domestic violence and sexual assault established
17 under AS 18.66.010 for grants for the operation of domestic violence and sexual
18 assault programs;

19 (3) the Department of Corrections for incarceration and probation
20 programs;

21 (4) the office of victims' rights; or

22 (5) nonprofit victims' rights organizations for grants for services to
23 crime victims."

25-LS1449\W.3

- 1
- 2 Renumber the following bill sections accordingly.
- 3
- 4 Page 16, line 17:
 - 5 Delete "Sections 1 - 4, 9 - 12, 18 - 20, 25 - 27, and 34"
 - 6 Insert "Sections 1 - 4, 9 - 12, 18 - 20, 25 - 27, and 35"
 - 7
- 8 Page 16, line 23:
 - 9 Delete "Sections 13, 14, 33, and 35"
 - 10 Insert "Sections 13, 14, 34, and 36"
 - 11
- 12 Page 16, line 26:
 - 13 Delete "Sections 15 - 17, 30, and 31"
 - 14 Insert "Sections 15 - 17, 31, and 32"
 - 15
- 16 Page 17, line 3:
 - 17 Delete "Sections 22 - 24 and 36"
 - 18 Insert "Sections 22 - 24 and 37"
 - 19
- 20 Page 17, line 7:
 - 21 Delete "Section 32"
 - 22 Insert "Section 33"
 - 23
- 24 Page 17, line 8:
 - 25 Delete "Sections 32 and 38"
 - 26 Insert "Sections 33 and 39"
 - 27
- 28 Page 17, line 9:
 - 29 Delete "Sections 28 and 29"
 - 30 Insert "Sections 28 - 30"
 - 31

25-LS1449\W.3

- 1 Page 17, line 10:
- 2 Delete "secs. 39 and 40"
- 3 Insert "secs. 40 and 41"

Adopted
4/8/02

AMENDMENT 5

OFFERED IN THE HOUSE BY REPRESENTATIVE MEYER BY REQUEST

TO: HCS CS SB 265(), Version 25-LS1449\W

- 1 Page 6, line 24-27
- 2 Delete all material
- 3
- 4 Renumber the remaining sections accordingly.
- 5
- 6 Drafting Instructions:
- 7 Make any conforming changes to section renumbering as a result of adoption
- 8 of amendment.
- 9
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82V

adopted - NO change

will require conforming title amend.

4/8/09

AMENDMENT 6

OFFERED IN THE HOUSE

BY Rep Stoltze

TO: HCS CS SB 265(), Version 25-LS1-449W

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Page 14, line 19

Insert new section

Sec. 30. AS 47.17.023 is repealed and reenacted to read:

Sec. 47.17.023. Reports from certain persons regarding child pornography. A person providing, either privately or commercially, film, photo, or visual or printed matter processing, production, or finishing services or computer installation, repair, or other services, or Internet or cellular telephone services who, in the process of providing those services, observes a film, photo, picture, computer file, image or other matter and has reasonable cause to suspect that the film, photo, picture, computer file, image, or other matter visually depicts a child engaged in conduct described in AS 11.41.455(a) shall immediately report the observation to the [nearest law enforcement agency] and provide the law enforcement agency with all information known about the nature and origin of the film, photo, picture, computer file, image, or other matter.

Renumber remaining sections accordingly.

Drafting instructions: make any conforming changes to sections. Renumber as a result of adoption of amendment.

" a local state or federal law enforcement agency "

←
Failed
1-7

sw

adopted 4/8/08

AMENDMENT 7

OFFERED IN THE HOUSE

TO: HCS CSSB 265(). Draft Version "W"

1 Page 17, following line 4:

2 Insert a new bill section to read:

3 "** Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
6 of it to any person or circumstance, is held invalid, the remainder of this Act and the
7 application to other persons or circumstances are not affected."

8

9 Renumber the following bill sections accordingly.

10

11 Page 17, line 8:

12 Delete "Sections 32 and 38"

13 Insert "Sections 32 and 39"

14

15 Page 17, line 10:

16 Delete "secs. 39 and 40"

17 Insert "secs. 40 and 41"

4/8/08
Annexure adopted Gwa sav

replace "one year" with
"eighteen months"

at

p. 10 line 15

p. 10 lines 19-20

p. ~~10~~ 11 line 11

p. 11 line 13

SW

4/8 withdrawn

25-LS1449W.7
Luckhaupt
4/8/08

AMENDMENT 9

OFFERED IN THE HOUSE

TO: HCS CSSB 265(), Draft Version "W"

1 Page 1, line 9, following "theft;":

2 Insert "relating to penalties for failure to report certain crimes;"

3

4 Page 6, following line 23:

5 Insert new bill sections to read:

6 "* Sec. 12. AS 11.56.765(d) is amended to read:

7 (d) Failure to report a violent crime committed against a child is a

8 (1) class C felony if the crime not reported is an unclassified

9 felony; or

10 (2) class A misdemeanor if the crime not reported is other than an

11 unclassified felony.

12 * Sec. 13. AS 11.56.767(d) is amended to read:

13 (d) Failure to report a violent crime committed against an adult is a

14 (1) class C felony if the crime not reported is an unclassified

15 felony; or

16 (2) class A misdemeanor if the crime not reported is other than an

17 unclassified felony [VIOLATION]."

18

19 Renumber the following bill sections accordingly.

20

21 Page 16, line 10:

22 Delete "secs. 22 and 23"

23 Insert "secs. 24 and 25"

- 1
- 2 Page 16, line 11:
 - 3 Delete "sec. 24"
 - 4 Insert "sec. 26"
 - 5
- 6 Page 16, line 17:
 - 7 Delete "Sections 1- 4, 9 - 12, 18 - 20, 25 - 27, and 34"
 - 8 Insert "Sections 1- 4, 9 - 14, 20 - 22, 27 - 29, and 36"
 - 9
- 10 Page 16, line 23:
 - 11 Delete "Sections 13, 14, 33, and 35"
 - 12 Insert "Sections 15, 16, 35, and 37"
 - 13
- 14 Page 16, line 26:
 - 15 Delete "Sections 15 - 17, 30, and 31"
 - 16 Insert "Sections 17 - 19, 32, and 33"
 - 17
- 18 Page 16, line 29:
 - 19 Delete "Section 21"
 - 20 Insert "Section 23"
 - 21
- 22 Page 17, line 3:
 - 23 Delete "Sections 22 - 24 and 36"
 - 24 Insert "Sections 24 - 26 and 38"
 - 25
- 26 Page 17, line 7:
 - 27 Delete "Section 32"
 - 28 Insert "Section 34"
 - 29
- 30 Page 17, line 8:
 - 31 Delete "Sections 32 and 38"

1 Insert "Sections 34 and 40"

2

3 Page 17, line 9:

4 Delete "Sections 28 and 29"

5 Insert "Sections 30 and 31"

6

7 Page 17, line 10:

8 Delete "secs. 39 and 40"

9 Insert "secs. 41 and 42"

Adopted

Conceptual Am #10

by McGuire

changing lookback

from 10 - 15 years

pg 3, line 8

pg 4, L25

pg 4, L29

change "10" to "15"

1 Insert "Sections 34 and 40"

2

3 Page 17, line 9:

4 Delete "Sectons 28 and 29"

5 Insert "Sections 30 and 31"

6

7 Page 17, line 10:

8 Delete "secs. 39 and 40"

9 Insert "secs. 41 and 42"

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: SB265HCSCS(FIN)-LAW-CRIM-04-09-0
 Bill Version: SB265HCSCS(FIN)
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to the payment of PFD's to sex offenders RDU CRIMINAL
or child kidnappers Component Criminal Appeals/Special Litigation
 Sponsor SENATOR(S) MCGUIRE
 Requester HOUSE FINANCE Component Number 2203

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	182.0	0.0	182.0	182.0	182.0	182.0	182.0	182.0
Travel	10.5	0.0	10.5	10.5	10.5	10.5	10.5	10.5
Contractual	7.5	0.0	7.5	7.5	7.5	7.5	7.5	7.5
Supplies								
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	200.0	0.0	200.0	200.0	200.0	200.0	200.0	200.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	200.0	0.0	200.0	200.0	200.0	200.0	200.0	200.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	200.0	0.0	200.0	200.0	200.0	200.0	200.0	200.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	2	-	2	2	2	2	2
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: Betty Martin, Administrative Services Division Phone: (907) 465-3673
 Division: Administrative Services Date/Time: 4/9/08 11:30 AM
 Approved by: Talis Colberg, Attorney General Date: 4/9/2008
Department of Law

ANALYSIS CONTINUATION

HCS CSSB 265(FIN) requires that the permanent fund dividend of a person required to register as a sex offender or child kidnapper be delayed until the person submits proof that the person has fully complied with the law addressing sex offender registration.

The bill also makes several changes in the criminal law regarding bootlegging, furnishing alcohol to a minor, search warrants, arson, criminally negligent burning, post-conviction relief applications, and how persons charged with a crime but found incompetent to be tried for the crime are treated.

The bill expands the reporting requirements for persons who develop photographs and repair computers who, in the course of their work, find images of child pornography

The bill will expand the court's jurisdiction to issue search warrants outside the state and is designed to increase the number of cross-border crimes that can be prosecuted. It is anticipated that this will be especially true in computer-aided crimes and child pornography.

Internet crimes against children, like child pornography, child enticement, identity theft require specialized skills that prosecutors generally do not learn in law school. As specialized investigative units are developed, the district attorneys prosecuting these crimes need similar skills to those of the investigators. Special skills in communicating complex technical information to jurors is also important.

A new attorney to specialize in this work, as well as 1 Law Office Assistant, would work in the Office of Special Prosecutions and Appeals and would assist in the prosecution of Internet crimes throughout the state.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 265(TRA)
(S) Publish Date: 3/3/08

Identifier (file name): SB265-DOC-OC-2-15-08 Dept. Affected: Corrections
Title: "An Act relating to drivers' licenses and identification cards issued to sex offenders and child kidnappers." RDU: Administration and Operations
Sponsor: Senator McGuire Component: Office of the Commissioner
Requester: Senate Transportation Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	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)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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)

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Dwayne Peoples, Deputy Commissioner
Department of Corrections

Phone: (907) 465-3339
Date/Time: 2/15/08 2:13 PM
Date: 2/15/2008

FISCAL NOTE

need new note

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HCS CSSB 265 (FIN)
() Publish Date: _____

Identifier (file name): SB265HCSCS(FIN)-DPS-AST-4-7-08 Dept. Affected: Public Safety
Title: Omnibus Crime Bill RDU: Alaska State Troopers
Component: Alaska Bureau of Investigation
Sponsor: Senator McGuire
Requester: House Finance Committee Component Number: 2744

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	146.0		146.0	146.0	146.0	146.0	146.0
Travel	18.0		18.0	18.0	18.0	18.0	18.0
Contractual	242.0		242.0	242.0	242.0	242.0	242.0
Supplies	4.0		4.0	4.0	4.0	4.0	4.0
Equipment	10.0		10.0	10.0	10.0	10.0	10.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	420.0	0.0	420.0	420.0	420.0	420.0	420.0

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	420.0		420.0	420.0	420.0	420.0	420.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	420.0	0.0	420.0	420.0	420.0	420.0	420.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary	2		2	2	2	2	2

ANALYSIS: (Attach a separate page if necessary)

Crime in Alaska is a significant issue. Statewide Crime Data for the year 2000 indicates a ranking of 22nd nationally. Violent crime statistics indicate a rate of 10th in the nation. Alaska is ranked 1st nationally in the category of sexual assault and sexual abuse. Alaska also has the highest per capita use of Internet resources. In Alaska, child enticement and child pornography occur in both urban and rural environments. To effectively respond to these crimes will require a significant shift in strategies to include embracing technology; training personnel to respond to the issues; and integrating resource groups to maximize the personnel and resources available to meet this need.

The Alaska Bureau of Investigation (ABI) is the only agency that has statewide law enforcement authority and the

Prepared by: _____
Division: _____
Approved by: DPS

Phone: _____
Date/Time: 4/8/08 12 52 PM
Date: _____

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

mandate to assist smaller rural agencies in the investigation of crime, including computer related crime.

As a component to this mission, ABI works closely local, state, and federal agencies to coordinate efforts in safeguarding our youth. This fiscal note focuses on strategies to address the five critical components of effective response to Internet crimes against children: investigation; forensics; prosecution; building capacity; and public education.

Qualified personnel are required. Internet crimes against children, like child enticement, child pornography, identity theft, or any other ways of injuring young people, are the type of offenses which require specialized skills by both investigators and prosecutors. Knowledge of hardware, software, connectivity, and identifying the offender are specialized areas of knowledge and skills. The legal issues are also unique. Specialized knowledge of the use of search warrants and interstate subpoenas are necessary.

Specialized equipment and on-going training to exceed projected need must be maintained. Computer technology is constantly evolving and equipment and training must keep up or surpass the opposition's. Much of this forensic training is only available outside the state, which increases the cost.

Rapid and accurate intelligence gathering, dissemination, and information sharing, not only among law enforcement, but also through public education on how to safeguard child Internet users as well as how to report Internet crimes against children is vital.

This fiscal note includes funding for one criminal justice technician; one Alaska State Trooper investigator; equipment; training; travel; multi-media commercial time; and the services of one Department of Law attorney and one half-time law office assistant with the specialized knowledge and skills required for these types of cases.

FISCAL NOTE

Replaced #5

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSB 265(TRA)
(S) Publish Date: 3/4/08

Identifier (file name): SB265-DOA-DMV-02-13-08 Dept. Affected: Administration
Title: "Drivers' licenses and ID cards issued to sex offenders..." RDU: Division of Motor Vehicles
Sponsor: Sen. McGuire Component: Motor Vehicles
Requester: (S) TRA Component Number: 2348

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	155.0							
Supplies								
Equipment								
Land & Structures								
Grant: & Claims								
Miscellaneous								
TOTAL OPERATING	155.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()	0.0							
-------------------------------	------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
1156 Receipt Supported Services	155.0							
TOTAL	155.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill would require the Division of Motor Vehicles' database to interface with the Department of Public Safety database to determine sex offender status. It would also require a change to DMV's computer program to allow for an alternate expiration date.

The fiscal note reflects the cost of a contract programmer for 650 hours for analysis, review, security, planning, and implementation of the interface, and an additional 120 hours for interface implementation and automatic 1-year expiration date programming.

Prepared by: Whitney H. Brewster, Director
Division: Motor Vehicles
Approved by: Kevii. Brooks, Deputy Commissioner
Department of Administration

Phone: 907-269-5574
Date/Time: 2/14/08 12:00 AM
Date: 2/14/2008

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning Senate Bill No. 265, relating to the payment of permanent fund**
3 **dividends to certain individuals required to register as sex offenders or child**
4 **kidnappers; relating to execution upon permanent fund dividends by civilian process**
5 **servers using electronic procedures; and amending Rule 89, Alaska Rules of Civil**
6 **Procedure.**

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

8 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
9 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
10 changes to the title of a bill, are suspended in consideration of Senate Bill No. 265, relating to
11 the payment of permanent fund dividends to certain individuals required to register as sex
12 offenders or child kidnappers; relating to execution upon permanent fund dividends by
13 civilian process servers using electronic procedures; and amending Rule 89, Alaska Rules of
14 Civil Procedure.

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99591
Phone (907) 269-6250
Fax (907) 269-0249



Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 265 – Sex Offenders & Child Kidnappers

One out of ten convicted sex offenders and child kidnappers in the State of Alaska are failing to keep their information current on the state Sex Offender Registry (SOR). SB 265 aims to bring these offenders into compliance by withholding their Permanent Fund Dividend until they have registered.

Information provided to the PFD is arguably the most accurate and up-to-date information in the state. SB 265 taps into this valuable resource to bring the one out of ten noncompliers on the SOR into compliance.

SB 265 would require PFD applicants to be screened against the Department of Public Safety's Sex Offender Registry. If the applicant is found to be a convicted sex offender and out of compliance with the SOR, the application would be rejected and a notice with instructions on how to update SOR information would be mailed to the applicant.

By creating an incentive for convicted sex offenders to keep their SOR information up to date, SB 265 would relieve law enforcement of the burden of having to dedicate the time, money, and resources to track down noncompliant offenders. Convicted sex offenders willingly updating their information would also relieve the court system of the burden of trying and convicting noncompliers.

But most importantly, SB 265 would increase the effectiveness of an already successful and popular SOR program. By ensuring up-to-date and accurate information is posted on the State SOR, SB 265 gives Alaskan citizens an improved means to identify convicted sex offenders who may be living in their communities.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 18, 2008

SUBJECT: Payment of permanent fund dividends; sectional summary
(CSSB 265(); draft version K)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Tamara Brandt Cook
Director

Sec. 1. Delays payment of a permanent fund dividend to an individual who is required to register as a sex offender or child kidnapper if the individual has not registered or has not completed periodic verifications or notices. The Department of Revenue must notify the individual in writing if payment is delayed and request proof of registration and compliance with the verification or notice requirements. The dividend may not be paid unless compliance is obtained within one year after the notification. If the individual dies before a dividend that remains payable is paid, the dividend is paid to a personal representative of the individual's estate.

Sec. 2. Technical conforming amendment to accommodate the delayed payment provision in sec. 1.

Sec. 3. Permits a writ of execution upon a dividend to be served on the Commissioner of Revenue by a civilian process service licensed by the Commission of Public Safety using electronic execution procedures.

Sec. 4. Technical conforming amendment to accommodate sec. 3.

Sec. 5. Gives notice that allowing a civilian process server to execute on a dividend by electronic means has the effect of changing Rule 89, Alaska Rules of Civil Procedure.

Sec. 6. Provides that the amendments that have the effect of changing a court rule take effect only if the bill section that provides notice of the court rule change receives the two-thirds majority vote required under the state constitution.

Sec. 7. January 1, 2009 is the effective date for secs. 1 and 2.

Sec. 8. If the provisions that amend a court rule take effect, they take effect on January 1, 2009.

TBC:ljw
08-156.ljw

LEGAL SERVICES

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 20, 2008

SUBJECT: Sex offender registration and permanent fund dividends
(Work Order No. 25-LS1538)

TO: Senator Lesil McGuire
Chair of the Senate State Affairs Committee
Attn: Trevor Fulton

FROM: Tamara Brandt Cook
Director *TBC*

Would there be a constitutional issue with withholding a sex offender's permanent fund dividend if the offender fails to comply with sex offender registration requirements?

A convicted sex offender is required to comply with the registration requirements of AS 12.63.010 which are fairly detailed. Failing to comply with the registration requirements is, itself, a criminal offense. Under AS 11.56.830, failure to register as a sex offender in the first degree is a class C felony. Under AS 11.56.840, failure to register as a sex offender in the second degree is a class A misdemeanor. So, the state has already established the penalty for failure to comply with the registration requirements. Consequently, it is possible that an equal protection challenge could be brought against the state if it treats people who are convicted of failing to register as sex offenders differently from people who are convicted of other crimes that carry the same penalties.

However, in most cases a person who fails to register as a sex offender already loses eligibility for permanent fund dividends. AS 43.23.005(d) provides:

- (d) Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when
- (1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;
 - (2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a
 - (A) felony; or
 - (B) misdemeanor if the individual has been convicted of
 - (i) a prior felony as defined in AS 11.81.900; or
 - (ii) two or more prior misdemeanors as defined in AS 11.81.900.

Senator Lesil McGuire

February 20, 2008

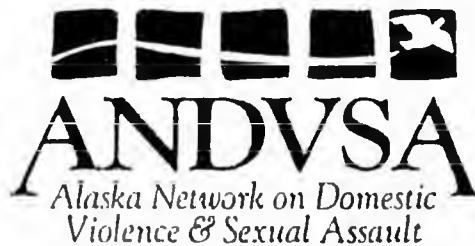
Page 2

Note that if an individual, during the dividend qualifying year, has been sentenced as a result of conviction of failure to register as a sex offender in the first degree or was incarcerated for that crime, the individual does not qualify for a permanent fund dividend. If an individual, during the dividend qualifying year, was incarcerated as a result of conviction of failure to register as a sex offender in the second degree, that individual will not qualify for a permanent fund dividend because, essentially, all persons who are required to register have already been convicted of prior offenses that trigger the ineligibility provision of AS 43.24.005(d)(2)(B).

TBC:med

08-125.med

Juneau Office
130 Seward St #209
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www.andvsa.org



Sitka Office
PO Box 6631
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February 27, 2008

Senator McGuire
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator McGuire:

On behalf of the nineteen member domestic violence and sexual assault programs throughout the state that comprise the Alaska Network on Domestic Violence and Sexual Assault, thank you for introducing SB 265. This bill would help ensure that convicted sex offenders keep their registration information up to date.

In its current form, the bill would require that the DMV screen all applicants for driver's licenses against the state sex offender registry (SOR) and, if an applicant for a driver's license is found to be non-compliant with the registry, to withhold granting the license until the convicted sex offender updates his registration information. In addition, the DMV would set the expiration date for one year from the date issued, thereby compelling the convicted sex offender to register and/or update information at least once per year.

Sen. McGuire, you have made us aware of your plans to introduce a significant change to the bill, which would remove the DMV from the equation and use instead the Permanent Fund Dividend application as a screening tool for SOR compliance. The new bill proposes that a convicted sex offender indicate a past conviction (via a yes/no question) on the application. The PFD office would then screen those applicants against the SOR, and refrain from processing the PFD application of any convicted sex offender not in compliance with the state registry until that individual's information had been updated with the SOR.

The Alaska Network on Domestic Violence and Domestic Assault fully supports legislation that reduces the rate of non-compliance with the SOR among convicted offenders and that, by extension, helps to keep survivors of sexual violence apprised of the whereabouts of convicted offenders. Thank you for sponsoring this bill.

Regards,

Peggy Brown
Executive Director

Member Programs

Anchorage AWAIC, AWRC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE Fairbanks IAC
Homer SPIII Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC Kotzebue MFCC
Nome BSWG Palmer AFS Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV



Ads connect predator control, corruption



Rep. Mary Kapsner, D-Bethel (KTUU-TV)

by Jason Moore
Tuesday, March 11, 2008

ANCHORAGE, Alaska -- The scandal-ridden VECO Corp. had little to do with the state's predator control policies.

But one wouldn't know that watching an ad now airing by the Defenders of Wildlife Action Fund.

The group is attempting to pressure lawmakers into rejecting a pair of bills that would strengthen the predator control laws.



Defenders of Wildlife was active in gathering signatures for the ballot measure that would outlaw aerial wolf killing. (KTUU-TV)

The ad highlights the ongoing corruption scandal, including bribes and politicians who find themselves in jail concerning the Legislature's oil tax debates in 2006.

But group is attempting to stop predator control by drawing a correlation to the corruption probe.

"56,000 Alaskans signed a petition saying we want an opportunity to weigh in on these important wildlife issues for our state and the Legislature is pushing bills that could remove their ability to do that and we think the public needs to know about it," said Defenders of Wildlife Action Fund spokesman William Lutz.



Rep. Lindsey Holmes, D-Anchorage (KTUU-TV)

Defenders of Wildlife was active in gathering signatures for the ballot measure that would outlaw aerial wolf killing.

It argues bills under consideration would limit what game issues are decided by ballot initiative. But lawmakers don't like the group's tactics.

"Many of those of us from rural Alaska who have had nothing to do with VECO or Bill Allen or Rick Smith have been strong proponents of aerial wolf kill and predator control," said Rep. Mary Kapsner, D-Bethel. "I am deeply offended by that intimation that those are somehow those are connected."



Orutsararmut Native Council Co-Chairman Greg Roczicka (Rich Jordan/KTUU-TV)

"I was not impressed," said Rep. Lindsey Holmes, D-Anchorage. "I thought that drawing the parallel between those two was inappropriate."

Backers of wolf control programs called the ad disingenuous.

"If you want to say that folks that would support legislation

like that are corrupt then you might as well call all bush Alaskans corrupt as well by association," said Orutsarmlut Native Council Co-Chairman Greg Roczicka.

"It's about the trust people place in their representatives to represent their point of view," Lutz said. "Whether it's corruption and kickbacks or removing the public's ability to vote on issues that they said they want an opportunity to vote on -- it's all about the public trust in their representatives."

The VECO scandal had a backlash that hurt the oil industry in the form of higher taxes.

Defenders of Wildlife hopes the Legislature's credibility is shaken enough for a similar backlash against predator control.

One of the bills at issue is House Bill 348 authored by Wasilla Rep. Wes Keller.

His office says the bill would change the wording in state law to make it clear game is an asset that can only be allocated by the Legislature, not a citizens' initiative.

Keller says the bill will not affect the aerial wolf killing initiative on the ballot this year.

Contact Jason Moore at jmoore@ktuu.com

Shameful tactic 3/13/08

BBNLT EMMAT

Wildlife group pulls a sleazy trick

OPPONENTS OF predator control in Alaska are zealots and avid mudslingers, but they are stooping to a new low with their media campaign against wolf control legislation.

A television ad running in a heavy (and expensive) schedule on Alaska's broadcast stations suggests that their opponents are tied in with the ongoing corruption scandals involving several legislators and two former executives of Veco Corp. It even incorporates footage shot by the FBI with hidden cameras in the infamous Room 604 of the Baranof Hotel.

The ad, funded by the Defenders of Wildlife Action Fund, says "the corruption must end." Only problem for them — and members of the public who are deceived by the ad — is that the wolf control legislation being considered has nothing whatever to do with the corruption scandal.

Defenders of Wildlife is upset because the proposed legislation would blunt the impact of a wolf-control initiative on the ballot for this . . .

(cont'd from front page) August's primary election in Alaska, one signed by 56,000 people.

Rep. Wes Keller, a Wasilla Republican, is sponsor of one of the bills. His would establish game as an asset that can only be allocated by the Legislature, not a citizens' initiative.

Defenders of Wildlife's ploy is a sleazy opportunist trick intended to distort public policy with downright dishonesty.

We support Keller's idea and feel it should be expanded to put further limits on what can and can't be decided by petition. We think another measure would be in order as well, one restricting the sales pitches used by activists soliciting signatures on petitions.

Right now, the signature collectors can say anything they want. Even if people read before they sign, anyone who has ever been approached by them has probably heard statements made like: "Do you like wolves? Sign here." or in other cases: "Want to save democracy? Just write your name here."

By the time the person bends over to read the petition, he or she has already made up their mind and skims the wording (if they read it at all) before signing.

This is gross abuse of the public trust. The right to petition government is sacred in this country, but abuses like those we see here every year must be curtailed.



State of Alaska

Department of Public Safety

Council on Domestic Violence & Sexual Assault

Sarah Palin, Governor
Walter Monegan, Commissioner

March 19, 2008

Senator Lesil McGuire
State Capitol, Room 125
Juneau, Alaska 99801-1182

Subject: Support for CS for SB 265

Dear Senator McGuire:

Thank you for introducing SB 265, a bill that will help hold bring sexual assault perpetrators into compliance with the state Sex Offender Registry.

As you know, Alaska has held the shameful distinction for many years of being the leader in the country for incidences of forcible rape – and these are just the incidents that are reported which we know are only a portion of the actual offenses committed. We need all the tools available to prevent these crimes and to provide safety for victims, or potential victims, to the fullest extent possible. This legislation would provide us another tool to help in this effort by bringing more convicted sexual assault felons into compliance and allow the public, law enforcement and courts to have up-to-date information on their whereabouts.

Other states also grapple with the problem of ensuring sex offender registration compliance. The State of Alaska has a unique tool to help accomplish this through the Permanent Fund Dividend issuance. We appreciate the innovation of this approach and fully support CS for SB 265.

Thank you for your leadership in this area and for introducing this SB 265.

Sincerely,

Chris Ashenbrenner
Executive Director

"Public Safety Through Public Service"

Council on Domestic Violence & Sexual Assault
P.O. Box 111200 - Juneau, AK 99811 - Voice (907) 465-4356 - Fax (907) 465-3627

Straight Talk on Alcohol Transportation for Damp and Dry Communities

Note: This is a summary and not a full explanation of Alaska Law. Please do further research on your own if you have any doubts or questions about Alcohol Transportation or Possession in or to a Damp Community.

Kotzebue, Alaska, is a "damp" community. This means you can bring in to Kotzebue alcoholic beverages for consumption if it is properly labeled and within your monthly limits. It is a Felony offense to manufacture, sell, possess for sale, or barter alcoholic beverages. Title 4 of the Alaska Statutes describe in detail requirements regarding alcoholic beverages. For quick reference:

One person can bring/ship the following maximum amount per month to a "damp" community.

This is also the maximum amount one person can possess in a "damp" community:

10.5* liters of Distilled Spirits; and

24 liters of wine; and

12 gallons of malt beverages

*As of May 1, 2005 (ref. SB 210)

No one can bring/ship alcoholic beverages to a "dry" village.

The following Villages are DRY in the Northwest Arctic Borough:

Amber, Buckland, Candle, Deering, Kiana, Kivalina, Kobuk, Noorvik, Noatak, Shungnak, Selawik and Point Hope

If the following amounts (or more) are taken/attempted to be taken to a "dry" village the offense is a felony offense. Amounts under the following are misdemeanor offenses as described in detail in AS 04.16.200.

Felony Alcohol Quantities:

10.5 liters of Distilled Spirits; or

24 liters of wine; or
12 gallons of malt beverage

Alaska State Law requires that if you are transporting alcoholic beverages by common carrier (such as in your carry-on baggage, checked baggage, or shipped package) to a "damp" community, you must clearly LABEL in plain view the shipping container as:

ALCOHOLIC BEVERAGES

In at least 2" (inch) high letters in contrasting colors and attached clearly and in plain view an itemized receipt or list noting the TYPE, QUANTITY and VALUE of the alcohol inside. This labeling law requirement applies if you are transporting MORE THAN:

1 liter of distilled spirits; or

2 liters of wine; or

1 gallon of malt beverages

NOTE: Telling airline personnel that you are carrying alcohol in your baggage or boxes is NOT considered a defense. Violation of the labeling law is a class A misdemeanor CRIME punishable with a \$10,000 fine and / or up to 1 year in jail (AS 04.16.125)

Providing Alcohol to a minor in a local option community, in any quantity -is a FELONY offense.

It is contrary to Federal Law to mail any alcohol through the US Postal Service.

More information:

[National TSA rules on transporting Alcohol \(NOT the amounts for a DAMP community](http://kotzpdweb.tripod.com/alcohollimits.html)

- see above)

Commerce Department

Local option laws Q&A

Do I Have A Drinking Problem?

On-line Quiz

Terms:

"Wet" = A community where alcohol is sold in stores and available in bars

"Damp" = A community where alcohol isn't sold or available locally, but individuals can import through licensed vendors or transport certain quantity on their own.

"Dry" - A community where alcohol importation, possession, manufacture and sale is prohibited.

"Distilled Spirits" - Vodka, Gin, Whisky et. al. and flavored Liquors.

"Wine" - Grape based wine or honey based mead are in this category.

"Malt Beverage" - Beer, Wine coolers, Zima - marked Malt Beverage on package

Quantities:

Alcohol comes packaged in many sizes. Typical are:

12oz bottles or cans, packed in "12 Packs" or "Cases" of 24.

Beer and wine coolers (Malt based) are usually in cans or bottles of this size.

1 12-Pack = 1.125 Gallons; 10 12-Packs = 11.25 gallons (for maximum Malt Beverage calculation)

Beer also comes in 16oz, 20oz, 40oz, and Gallons and kegs.

750ml or 3/4 Liter, often referred to as a "Fifth".

1 Liter

1.5 Liter - Wine is usually 750 or 1.5 liter

32 750ml bottles = 24 Liters (for maximum Wine calculation)

1.75 Liter or "Half Gallon"

6 x 1.75liters = 10.5 liters (for maximum Distilled Spirits calculation)

16 x 750ml = 12 Liters (for maximum Distilled Spirits calculation)

Posted February, 2005; Updated July, 2006; November, 2007

February 27, 2008

Data from the last 4 years. There was no data from 2003.

Food Factory was checked 5 times and failed 1 time.

Pikes Landing was checked 7 times and failed 2 times. Not been checked in 1 year.

Pikes Waterfront was checked 2 times and has never failed.

Food Factory in North Pole was checked 1 time and has never failed.

He appreciated the assistance he received from the Food Factory for breaking up a fake ID ring.

He is happy to answer any questions and may be contacted at 269-0063.

Case#	LqrLic#	PermID	OpenDt	Comments	Beat	Location	OccurDt	OccurTm	Viol
040000695	858	RLF2	7/22/2004		HJBF	PIKES LANDING	7/22/2004	1650	9983
040001338	858	SZB0	10/20/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	PIKE'S LANDING, 4438 AIRPORT WAY	10/20/2004	0020	4102
040001345	858	SZB0	10/21/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	PIKE'S LANDING, 4438 AIRPORT WAY	10/21/2004	1845	4102
040001372	858	SZB0	10/28/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	PIKE'S LANDING, 4438 AIRPORT WAY	10/28/2004	1830	4102
040001460	858	SZB0	11/12/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	PIKE'S LANDING, 4438 AIRPORT WAY	11/12/2004	1800	4102
050000140	858	RLF2	2/23/2005		HJBF	PIKES LANDING	2/23/2005	1445	9983
050000239	858	RLF2	3/25/2005		HJBF	PIKES LANDING	3/25/2005	1120	9983
050000519	858	RLF2	6/30/2005		HJBF	PIKE'S LANDING	6/30/2005	1455	9983
050000790	858	RLF2	9/30/2005		HJBF	PIKES LANDING	8/24/2005	1325	9983
050000879	858	FRH0	10/19/2005	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA	PIKES LANDING 4438 AIRPORT ROAD	10/19/2005	0005	9419
050000879	858	FRH0	10/19/2005	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA		10/19/2005	0005	9423
050000879	858	FRH0	10/19/2005	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA		10/19/2005	0005	9931
050000879	858	FRH0	10/19/2005	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA		10/19/2005	0005	9878
060000076	858	RLF2	1/23/2006		HJBF	PIKES LANDING	1/23/2006	1400	9983
060000375	858	RLF2	2/21/2006		HJBF	PIKES LANDING	2/21/2006	1515	9983
060000654	858	JRB9	4/14/2006	REPORT ISSUED	UJBA	PIKES LANDING 4438 AIRPORT ROAD	2/21/2006	1430	9983
060000756	858	RLF2	4/25/2006	REPORT ISSUED	HJBF	PIKES LANDING	4/25/2006	1340	9983
060000946	858	RLF2	5/30/2006	REPORT ISSUED	HJBF	PIKES LANDING	5/30/2006	1115	9983
060001091	858	FRH0	6/19/2006	COMPLIANCE CHECK PASSED	UJBA	PIKE'S LANDING, 4438 AIRPORT ROAD	6/16/2006	2200	9419
060001408	858	RLF2	7/27/2006	REPORT ISSUED	HJBF	PIKES LANDING	7/27/2006	1230	9983
060001911	858	RLF2	9/27/2006	REPORT ISSUED	HJBF	PIKE'S LANDING	9/27/2006	1100	9983
060001933	858	RLF2	9/28/2006	CATERERS PERMIT TURNED IN TO AST NOT PROPER LAW ENFORCEMENT AGENCY LOST PERMIT. REISSUED TO JAY RAMRAS FOR EVENT AT PIONEER PARK W/PIKES CATERING PERMIT	UJBA	PIKES LANDING	9/15/2006	0600	9422
060002448	858	RLF2	11/29/2006	REPORT ISSUED	HJBF	PIKES LANDING	11/29/2006	1145	9983

060002584	858	FRH0	12/18/2006	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA	PIKE'S LANDING LOUNGE, 4438 AIRPORT ROAD	12/18/2006	1440	9419
060002584	858	FRH0	12/18/2006	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		12/18/2006	1440	9423
060002584	858	FRH0	12/18/2006	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		12/18/2006	1440	9931
060002584	858	FRH0	12/18/2006	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		12/18/2006	1440	9878
060002620	858	RLF2	12/26/2006	FAILED COMPLIANCE CHECK. FRH0 CASE 06-2584	HJBF	PIKE'S LANDING	12/17/2006	6000	9605
060002649	858	RLF2	12/29/2006	REPORT ISSUED	HJBF	PIKE'S LANDING	12/28/2006	1115	9983
070000090	858	RLF2	1/24/2007	REPORT ISSUED	HJBF	PIKES LANDING	1/24/2007	1330	9983
070001692	858	RLF2	8/30/2007	REPORT ISSUED	HJBF	PIKES WATERFRONT	8/30/2007	1500	9983
070002173	858	RLF2	12/27/2007	REPORT ISSUED	HJBF	PIKES WATERFRONT LODGE	12/27/2007	1300	9983
080000087	858	RLF2	1/30/2008	REPORT ISSUED	HJBF	PIKES LANDING	1/30/2008	1000	9983
040000163	3117	RLF2	3/5/2004	SATISFACTORY	HJBU	FOOD FACTORY	2/29/2004	1940	9983
040000781	3117	RLF2	8/5/2004		HJBU	FOOD FACTORY	8/5/2004	1520	9983
050000256	3117	RLF2	3/30/2005		HJBU	FOOD FACTORY	3/30/2005	1145	9983
050000900	3117	FRH0	10/20/2005	ROUTINE COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY, 101 SANTA CLAUSE LANE	10/19/2005	2142	9419
050001268	3117	RLF2	12/29/2005		HJBU	FOOD FACTORY	12/29/2005	1200	9983
060000394	3117	RLF2	2/25/2006		HJBU	FOOD FACTORY	2/25/2006	1220	9983
060001054	3117	RLF2	6/13/2006	REPORT ISSUED	HJBU	FOOD FACTORY	6/13/2006	1315	9983
060001718	3117	RLF2	8/28/2006	REPORT ISSUED	HJBU	FOOD FACTORY	8/28/2006	1400	9983
060002159	3117	RLF2	10/25/2006	REPORT ISSUED	HJBU	FOOD FACTORY	10/25/2006	1200	9983
060002459	3117	RLF2	11/29/2006	REPORT ISSUED	HJBU	FOOD FACTORY	11/29/2006	1430	9983
070000635	3117	RLF2	3/28/2007	REPORT ISSUED	HJBU	FOOD FACTORY	3/24/2007	1300	9983
070001376	3117	RLF2	6/11/2007	REPORT ISSUED	HJBU	FOOD FACTORY	6/11/2007	1515	9983
070001534	3117	RLF2	7/25/2007	REPORT ISSUED	HJBU	FOOD FACTORY	7/25/2007	1300	9983
070001791	3117	RLF2	9/19/2007	REPORT ISSUED	HJBU	FOOD FACTORY	9/19/2007	1230	9983
040000418	3381	RLF2	5/18/2004	R/E LICENSE	UJBA	FOOD FACTORY	5/18/2004	1460	9983
040000731	3381	RLF2	7/27/2004		UJBA	FOOD FACTORY	7/27/2004	1515	9983
040001340	3381	SZB0	10/20/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY 44 COLLEGE ROAD	10/20/2004	1830	4102
040001362	3381	SZB0	10/26/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	10/26/2004	2130	4102
040001369	3381	SZB0	10/27/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	10/27/2004	2300	4102
040001382	3381	SZB0	10/29/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	10/29/2004	2100	4102
040001488	3381	SZB0	11/18/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY 44 COLLEGE ROAD	11/18/2004	2000	4102
040001510	3381	SZB0	11/23/2004	COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY 44 COLLEGE ROAD	11/23/2004	2100	4102

040001289	3381	SZB0	11/26/2004 COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY , 44 COLLEGE ROAD	11/26/2004	2237	9419
040001290	3381	SZB0	11/26/2004 COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	11/26/2004	2239	9419
040001525	3381	SZB0	11/27/2004 COVERT ABC COMPLIANCE CHECKS	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	11/27/2004	2300	4102
050000182	3381	RLF2	3/4/2005	UJBA	FOOD FACTORY	3/4/2005	1110	9983
050000844	3381	RLF2	10/11/2005	UJBA	FOOD FACTORY	10/11/2005	1345	9983
050001208	3381	FRH0	12/20/2005 COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	12/16/2005	1930	9419
060000647	3381	JRB9	4/14/2006 REPORT ISSUED	UJBA	FOOD FACTORY 44 COLLEGE	2/27/2006	1438	9983
060000742	3381	RLF2	4/24/2006 REPORT ISSUED	UJBA	FOOD FACTORY	4/24/2006	1345	9983
060002580	3381	FRH0	12/18/2006 WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	12/18/2006	1149	9419
060002580	3381	FRH0	12/18/2006 WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		12/18/2006	1149	9423
060002580	3381	FRH0	12/18/2006 WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		12/18/2006	1149	9931
060002621	3381	RLF2	12/26/2006 FAILED COMPLIANCE CHECK FRH0 CASE 06-2580	UJBA	FOOD FACTORY	12/17/2006	0000	9605
070000357	3381	RLF2	2/24/2007 REPORT ISSUED	UJBA	FOOD FACTORY	2/24/2007	1515	9983
070000974	3381	RLF2	4/25/2007 ASSIST FRH0 WITH COMPLIANCE CHECK 07-922	UJBA	44 COLLEGE ROAD - FOOD FACTORY	4/25/2007	1800	9605
070000922	3381	FRH0	4/27/2007 COMPLIANCE CHECK PASSED	HJBF	THE FOOD FACTORY, 44 COLLEGE ROAD	4/25/2007	1800	9419
070001517	3381	RLF2	7/23/2007 REPORT ISSUED	UJBA	FOOD FACTORY	7/23/2007	1515	9983
070001672	3381	RLF2	8/27/2007 REPORT ISSUED	UJBA	FOOD FACTORY	8/27/2007	1400	9983
070001939	3381	RLF2	10/30/2007 REPORT ISSUED	UJBA	FOOD FACTORY	10/30/2007	1430	9983
070002060	3381	FRH0	12/10/2007 COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	12/5/2007	2111	9419
080000030	3381	FRH0	1/5/2008 COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY, 44 COLLEGE ROAD	1/3/2008	1322	9419
040000694	4035	RLF2	7/22/2004	HJBF	PIKES WATERFRONT LODGE	7/22/2004	1615	9983
050001255	4035	RLF2	12/27/2005	HJBF	MIDNIGHT SUN BAR & GRILL	12/27/2005	1800	9983

Case#	Lic#	PermiD	OpenDt	Comments
050000790	858 RLF2		38625	
050000794	858 FRH0		38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK
050000797	858 FRH0		38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK
050000799	858 FRH0		38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK
050000879	858 FRH0		38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK
060000076	858 RLF2		38740	
060000175	858 RLF2		38769	
060000154	858 JRB9		38821	REPORT ISSUED
060000256	858 RLF2		38832	REPORT ISSUED
060000346	858 RLF2		38867	REPORT ISSUED
060001091	858 FRH0		38887	COMPLIANCE CHECK PASSED
060001408	858 RLF2		38925	REPORT ISSUED
060001911	858 RLF2		38987	REPORT ISSUED
060001933	858 RLF2		38988	CATERER'S PERMIT TURNED IN TO AST NOT PROPER LAW ENFORCEMENT AGENCY LOST PERMIT REISSUED TO JAY RAMOS FOR EVENT AT PIONEER PARK W/PIKES CATERING PERMIT
060002448	858 RLF2		39050	REPORT ISSUED
060002584	858 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002584	858 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002584	858 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002584	858 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002620	858 RLF2		39077	FAILED COMPLIANCE CHECK FRH0 CASE 06-2584
060002649	858 RLF2		39080	REPORT ISSUED
070000090	858 RLF2		39106	REPORT ISSUED
070001692	858 RLF2		39324	REPORT ISSUED
070002173	858 RLF2		39443	REPORT ISSUED
080000087	858 RLF2		39477	REPORT ISSUED
050000900	3117 FRH0		38645	ROUTINE COMPLIANCE CHECK PASSED
050001268	3117 RLF2		38715	
060000194	3117 RLF2		38773	
060001054	3117 RLF2		38881	REPORT ISSUED
060001718	3117 RLF2		38957	REPORT ISSUED
060002159	3117 RLF2		39015	REPORT ISSUED
060002459	3117 RLF2		39050	REPORT ISSUED
070000635	3117 RLF2		39169	REPORT ISSUED
070001376	3117 RLF2		39244	REPORT ISSUED
070001534	3117 RLF2		39288	REPORT ISSUED
070001791	3117 RLF2		39344	REPORT ISSUED
050000844	3381 RLF2		38636	
050001208	3381 FRH0		38706	COMPLIANCE CHECK PASSED
060000647	3381 JRB9		38821	REPORT ISSUED
060000742	3381 RLF2		38831	REPORT ISSUED
060002580	3381 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002580	3381 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002580	3381 FRH0		39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED
060002621	3381 RLF2		39077	FAILED COMPLIANCE CHECK FRH0 CASE 06-2580
070000357	3381 RLF2		39117	REPORT ISSUED
070000474	3381 RLF2		39197	ASSIST FRH0 WITH COMPLIANCE CHECK 07-322
070000621	3381 FRH0		39199	COMPLIANCE CHECK PASSED
070001117	3381 RLF2		39286	REPORT ISSUED
070001172	3381 RLF2		39421	REPORT ISSUED
070001449	3381 RLF2		39485	REPORT ISSUED
070001501	3381 FRH0		39470	COMPLIANCE CHECK PASSED
090000210	3381 FRH0		39472	COMPLIANCE CHECK PASSED
090001255	4095 RLF2		39211	

Beat	Location	OccurDt	OccurTm	Viol
HJBF	PIKES LANDING	38588	1325	9983
UJBA	PIKES LANDING 4438 AIRPORT ROAD	38644	0905	9419
UJBA		38644	0905	9424
UJBA		38644	0905	9931
UJBA		38644	0905	9878
HJBF	PIKES LANDING	38740	1400	9983
HJBF	PIKES LANDING	38769	1515	9983
UJBA	PIKES LANDING 4438 AIRPORT ROAD	38769	1430	9983
HJBF	PIKES LANDING	38842	1340	9983
HJBF	PIKES LANDING	38867	1115	9983
UJBA	PIKE'S LANDING 4438 AIRPORT ROAD	38884	2200	9419
HJBF	PIKES LANDING	38925	1230	9983
HJBF	PIKE'S LANDING	38987	1100	9983
UJBA	PIKES LANDING	38925	0900	9422
HJBF	PIKES LANDING	39050	1145	9983
UJBA	PIKE'S LANDING LOUNGE 4438 AIRPORT ROAD	39069	1440	9419
UJBA		39069	1440	9423
UJBA		39069	1440	9931
UJBA		39069	1440	9878
HJBF	PIKE'S LANDING	39069	0900	9605
HJBF	PIKE'S LANDING	39079	1115	9983
HJBF	PIKES LANDING	39106	1330	9783
HJBF	PIKES WATERFRONT	39324	1500	9983
HJBF	PIKES WATERFRONT LODGE	39443	1300	9983
HJBF	PIKES LANDING	39477	1090	9983
UJBA	FOOD FACTORY, 101 SANTA CLAUSE LANE	38644	2342	9419
HJBU	FOOD FACTORY	38715	1200	9983
HJBU	FOOD FACTORY	38773	1220	9983
HJBU	FOOD FACTORY	38881	1415	9983
HJBU	FOOD FACTORY	38957	1400	9983
HJBU	FOOD FACTORY	39015	1200	9983
HJBU	FOOD FACTORY	39050	1430	9983
HJBU	FOOD FACTORY	39169	1300	9983
HJBU	FOOD FACTORY	39244	1515	9983
HJBU	FOOD FACTORY	39288	1300	9983
HJBU	FOOD FACTORY	39344	1230	9983
UJBA	FOOD FACTORY	38636	1345	9983
UJBA	FOOD FACTORY 44 COLLEGE ROAD	38706	1400	9419
UJBA	FOOD FACTORY 44 COLLEGE	38775	1435	9983
UJBA	FOOD FACTORY	38831	1435	9983
UJBA	FOOD FACTORY 44 COLLEGE ROAD	39069	1140	9419
UJBA		39069	1140	9423
UJBA		39069	1140	9931
UJBA	FOOD FACTORY	39069	0900	9605
UJBA	FOOD FACTORY	39117	1515	9983
UJBA	44 COLLEGE ROAD FOOD FACTORY	39197	1300	9605
HJBF	THE FOOD FACTORY 44 COLLEGE ROAD	39199	1300	9419
UJBA	FOOD FACTORY	39286	1515	9983
UJBA	FOOD FACTORY	39421	1400	9983
UJBA	FOOD FACTORY	39485	1415	9983
UJBA	FOOD FACTORY	39470	1430	9983
UJBA	FOOD FACTORY 44 COLLEGE ROAD	39472	1315	9419
UJBA	FOOD FACTORY 44 COLLEGE ROAD	39472	1315	9419
HJBF	MIDNIGHT SUN PARK GRILL	39211	0900	9983

Linda Hay

From: Ralph Samuels [ralph@acsalaska.net]
Sent: Tuesday, December 11, 2007 6:25 AM
To: Linda Hay
Subject: FW: Post Conviction Relief
Attachments: ap-2129.pdf

Linda,

I would like to pursue this... can you talk to Annie Carpeneti? Do you know her?..ralph

-----Original Message-----

From: Rep. Ralph Samuels [mailto:Representative_Ralph_Samuels@legis.state.ak.us]
Sent: Monday, December 10, 2007 3:59 PM
To: 'Ralph Samuels'; Ralph Samuels
Subject: FW: Post Conviction Relief

From: Svobodny, Richard (LAW) [mailto:richard.svobodny@alaska.gov]
Sent: Monday, December 10, 2007 1:39 PM
To: Rep. Ralph Samuels
Cc: Carpeneti, R Anne D (LAW)
Subject: Post Conviction Relief

I am writing you because of two developments with post convictions relief (PCR) in Alaska. One of those is the case that you talked to Jay Fayette about, the Fletcher case. That case is related to the second issue. The second issue is a decision by the Court of Appeals on Friday. That case is Holden v State. I am attaching it for your review. Both of these cases are very old, with several delays caused defense council, with out any accountability. In Fletcher even though on its face it appeared to be filed long after the statute of limitations had run, an attorney was appointed at public expense. The trial court made the appointment under the authority of Administrative Rule 12(e) which allows the court to appoint an attorney when AS18.85.100 (a) does not allow such an appointment. AS18.85.100 (a) is the statute which sets out when a court can appoint a public defender. In Holden the court held that you get an attorney even though on its face the PCR is time bared so that the attorney can investigate weather the PCR really is time bard. I have not yet decided weather this means that Holden is saying that appointments of the public defender are now possible under title 18 and need to be made under the Administrative Rule.

Last session I told you that, short of a constitutional amendment there was not much that can be done about the delays in these PCRs or getting the court to follow the intent of the legislature. I have had one idea and people smarter than I, have come up with some ideas.

My idea is to amend Administrative Rule 12 to add a section to require a trial judge make written findings as to way there should be an appointment of council at public expense with conclusions of law as to way the appointment is required by due process and that the appointment is reported within 30 days to the House and Senate fiancé committees. The court system then is to provide the legislature a special report as to how much is spent on these extra statutory appointments every three months. It is my believe that if judges are required to do administrative work they are less likely to enter orders that just effect other people rather than also effect them. A quarterly report would require an appointed attorney to let the court know if they have done anything on the case in the last three months. If they have not the state should be objecting to the attorney not proceeding in a timely manner. Also financial accountability is an important public goal.

12/11/2007

As for the other ideas I am setting forth e-mail from OSPA:

From: McLean, Susan S (LAW)
Sent: Fri 12/7/2007 10:39 AM
To: Svobodny, Richard (LAW); Carpeneti, R Anne D (LAW)
Cc: Kossler, Douglas H (LAW)
Subject: Need for PCR legislation

This morning the court of appeals issued an opinion in *Holden v. State*, in which the court holds that an indigent defendant has a constitutional right to court-appointed counsel to assist in determining whether a PCR is untimely. The COA invited briefing from the Public Defender and OPA, and both agencies argued for the appointment of counsel. Therefore, AS 12.72.030(a) (3)-(4) (the statute of limitations for PCRs) and AS 18.85.100(c) (appointment of counsel) are unconstitutional to the extent that those statutes specifically provided that court could not appoint counsel to assist in that determination.

This adds one more tiresome, time-consuming and expensive layer to the post conviction process.

Last week, we talked about how to amend the PCR statute to cut back on PCR's. Doug suggested a uniform one year statute of limitation for all PCR's; we discussed the possibility that the disparity in the current statutes of limitation was the result of some deal with the public defenders or OPA. We wonder whether, if such an agreement was struck, it rested on the premise that counsel would not be available for an untimely PCR. If so, are we still honor bound to agree to disparate statutes of limitation?

At this point we don't see any likelihood that the Supreme Court would change this result (though we're still thinking about it). In the meantime, we do have suggestions for this legislative session (Rep. Samuels asked for input?)

1. Make the statutes of limitation uniformly one year; and
2. Set threshold standards from which a trial court can summarily dismiss an untimely PCR, such as those which apply to newly discovered evidence. That is, there must be an affidavit showing that the information upon which the untimely PCR is based was truly unknown before the statute ran, that due diligence would not have revealed the information and so on.

As it now stands, the trial courts have to consider all the excuses, without having a statute which permits them to dismiss an untimely PCR which is based on information which was clearly available at the time of the trial, or even the first PCR. Winona Fletcher's untimely PCR is a good example of that.

From: Kossler, Douglas H (LAW)
Sent: Saturday, December 08, 2007 4:57 PM
To: McLean, Susan S (LAW); Svobodny, Richard (LAW); Carpeneti, R Anne D (LAW)
Subject: RE: Need for PCR legislation

I spoke to Nancy Simel about why if you don't appeal, the statute of limitations for pcr is two years, and if you do appeal, the statute of limitations is one year. Nancy was heavily involved with AS 12.72 when it was drafted.

Nancy said the thinking was two years if no appeal because it would give a defendant a comparable time to file a pcr to the defendant who appeals. they were apparently assuming an appeal takes one year. (that assumption is no longer true - with everyone so far behind, an appeal takes more like two years.)

so, there was apparently no agreement with the defense bar for a two-year statute of limitations if you don't appeal.

with *Grinols* and now *Holden*, the finality of a statute of limitations is sometimes somewhat illusory. I think we should make it a uniform one-year statute of limitations across the board for uniformity sake. I can also think of reasons other than uniformity - you get one year past your appeal to assess the effectiveness of your appellate attorney, why should you get two years past your sentencing to assess the effectiveness of your trial attorney?

12/11/2007

as to threshold standards for dealing with the untimely pcr issue that is now raised by *Holden*, Nancy had a great idea.

write into the threshold requirement that the merits of the post-conviction relief application cannot be addressed until a ruling on the untimeliness issue has been obtained. if the ruling is that the application is still untimely, there is no reason to go forward.

the above requirement would also address a problem we had in the recent *Moses* opinion <http://www.state.ak.us/courts/ops/am-5263.pdf> - where the court addressed the merits without addressing the timeliness issue (which was why the case had been remanded following the first appeal of the dismissal of *Moses'* pcr; this opinion reversing the superior court is a product of *Moses'* second appeal. we never see the end of these).

then Sue came up with another great idea - have the appointment of counsel for an untimely pcr be renewed if a pcr is held to be timely. that is, has the appointment of counsel for an untimely pcr only run for as long as it takes to determine whether the pcr is truly untimely or not. if the pcr is ruled to be timely, then have there be a reappointment of counsel.

i feel so strongly about these legislative changes I would be willing to Juneau to talk to 'he legislators myself about this area of the law. I can give a lot of examples to back up the positions we want to advance.

If these are ideas that you would like to go forward with I will help in any way I can. Annie Carpeneti has told me she would be willing to help with drafting.

Westlaw.

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(Cite as: 74 P.3d 889)**H****Grinols v. State**
Alaska, 2003.

Supreme Court of Alaska.
John Bruce GRINOLS,
Petitioner/Cross-Respondent,
v.
STATE of Alaska,
Respondent/Cross-Petitioner.
Nos. S-9939, S-9940.

Aug. 1, 2003.

Following affirmance of his conviction on three counts of sexual abuse of a minor, petitioner sought writ of habeas corpus. The Superior Court, First Judicial District, Ketchikan, Thomas M. Jahnke, J., characterized petition as second application for post-conviction relief and dismissed petition. Petitioner appealed. The Court of Appeals, Mannheimer, J., 10 P.3d 600, affirmed in part, reversed in part, and remanded. Petitioner filed petition for hearing, and state filed cross-petition. The Supreme Court, Carpeneti, J., granted state's cross-petition and one part of petitioner's petition, and held that: (1) indigent defendant's right to legal representation in first application for post-conviction relief is constitutional in nature; (2) state constitution's due process clause required that counsel in first application for post-conviction relief be

effective; and (3) defendant's constitutional right to effective counsel in first post-conviction application required granting opportunity to challenge counsel's effectiveness in second post-conviction petition.

Affirmed.

West Headnotes

[1] Constitutional Law 92 ⇌ 580

92 Constitutional Law

92V Construction and Operation of
Constitutional Provisions92V(A) General Rules of
Construction92k580 k. In General. Most Cited
Cases

(Formerly 92k19, 92k13)

Supreme Court interprets the Alaska Constitution using its independent judgment, adopting the rule of law that is most persuasive in light of precedent, reason, and policy.

[2] Habeas Corpus 197 ⇌ 841

197 Habeas Corpus

197III Jurisdiction, Proceedings, and
Relief

197III(D) Review

197III(D)2 Scope and Standards
of Review

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against an attorney appointed to represent the defendant in a post-conviction relief proceeding is the defendant's interest in effective representation. Const. Art. 1, § 7.

[6] Criminal Law 110 ⇌ 1602

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)1 In General

110k1600 Counsel

110k1602 k. Right to

Counsel. Most Cited Cases

Indigent defendant is guaranteed legal representation in a first application for post-conviction relief both under the state constitution and under state statutes applicable thereto. Const. Art. 1, § 7; AS 18.85.100(e).

[7] Criminal Law 110 ⇌ 1668(3)

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)3 Hearing and

Determination

110k1666 Effect of

Determination

110k1668 Successive

Post-Conviction Proceedings

110k1668(3) k.

Particular Issues and Cases. Most Cited Cases

Because a defendant has a constitutional right to effective counsel in a first application for post-conviction relief, that defendant must be given the opportunity to

challenge the effectiveness of counsel in a second petition for post-conviction relief. Const. Art. 1, § 7.

*890 John B. Grinols, pro se, Vancouver, British Columbia, Canada.

Naney R. Simel, Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Respondent/Cross-Petitioner.

Marcia E. Holland, Assistant Public Defender, Fairbanks, and Barbara K. Brink, Public Defender, Anchorage, for Amicus Curiae Alaska Public Defender Agency.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, BRYNER, and CARPENETTI, Justices.

OPINION

CARPENETTI, Justice.

I. INTRODUCTION

We accepted two questions on a petition for hearing regarding the ability of a defendant to challenge the effectiveness of post-conviction relief counsel: (1) Whether the due process clause of the Alaska Constitution requires that a criminal defendant be able to challenge the effectiveness of counsel in a post-conviction proceeding, and (2) if so, whether due process requires the

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appointment of counsel in that proceeding. Because the due process clause does require that a defendant be able to challenge the effectiveness of counsel, we affirm the decision of the court of appeals on the first question. Because the petition for hearing was improvidently granted on the second question-whether due process requires counsel to be appointed in such proceedings-we decline to consider it.

II. FACTS^{FN1} AND PROCEEDINGS

FN1. The facts of this case are drawn principally from the opinion in the court of appeals, *Grinols v. State*, 10 P.3d 600 (Alaska App.2000).

John Grinols was convicted of three counts of sexual abuse of a minor in 1992. In 1995 the court of appeals affirmed those convictions. Grinols then filed a petition for post-conviction relief, alleging ineffective assistance of counsel on the part of his trial attorney. That petition was denied and that denial was affirmed by the court of appeals in 1998.

Grinols next filed a petition for writ of habeas corpus in January 1999, raising new attacks on his conviction. Relying on Alaska Civil Rule 86(m), the superior court ruled that Grinols's habeas corpus petition had to be treated as a second application for post-conviction relief. As

AS 12.72.020(a)(6) declares that defendants are entitled to only one application for post-conviction relief, the superior court dismissed Grinols's lawsuit.

Grinols appealed the dismissal, arguing that he had a constitutional right to pursue the new collateral attacks on his conviction. He argued that Civil Rule 86(m) abridged his right of habeas corpus or, in the alternative, that even if his habeas corpus petition must have been deemed a second application for post-conviction relief, he was still entitled to litigate his claims in spite of AS 12.72.020(a)(6). Grinols also contended that he was entitled to appointed counsel to assist him in his litigation.

The court of appeals held that the doctrine of *res judicata* that applied to habeas corpus and post-conviction relief litigation even prior to the enactment of the rule and statute would bar all but three of Grinols's claims. Of those three claims, the court of appeals held, one should have been treated as a motion in the underlying case^{FN2} and another fell within a legislatively-created exception to the ban on second applications for post-conviction*891 relief.^{FN3} The only remaining claim before the court was Grinols's assertion that he received ineffective assistance of counsel when he litigated his first application for post-conviction relief.

FN2. The court of appeals thus reversed the superior court's denial

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a. Under the Alaska Constitution's due process clause, must defendant be given an opportunity to challenge the competency of representation provided by an appointed attorney who represented the defendant in a post-conviction relief action?

b. If so, does the defendant also have a constitutional right to counsel and to appointed counsel to assist in prosecuting the ineffective assistance of counsel claim? [FN6]

FN6. Alaska Supreme Court Order No. 9940 (July 5, 2001).

We also invited the Alaska Public Defender Agency and the Office of Public Advocacy to file amicus briefs. FN7

FN7. *Id.*

III. STANDARD OF REVIEW

[1] We interpret the Alaska Constitution using our independent judgment, FN8, adopt[ing] the rule of law that is most persuasive in light of precedent, reason, and policy." FN9

FN8. *Leisnoi, Inc. v. Stratman*, 960 P.2d 14, 17 (Alaska 1998).

FN9. *Guin v. Ha*, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

*892 IV. DISCUSSION

In his brief to this court, Grinols separates his argument into nine sections. Six of those nine sections FN10 have no bearing on the questions accepted by this court for review. Rather, these sections either argue the merits of his ineffective counsel claim in his first post-conviction relief proceeding; detail specific encounters with various people involved in the investigation or litigation; or threaten members of the prosecution team, law enforcement, and this court.

FN10. Grinols titles these sections "Post-Conviction Ineffectiveness"; "The Affirmative Defense of Reasonable Mistake of Age"; "Procedural State Terrorism Resulting in Ineffective Assistance of Counsel"; "Probation and Parole Procedural State Terrorism"; "Alaska Statutes and Legislation and State Procedural Terrorism: Unreasonable Punishments Imposed Against the Family"; "Unreasonable Legislative Statutes-Oppressive Requirements for Classifications."

The remaining three sections of Grinols's brief, titled "Constitutional Right to Counsel," "Due Process," and "Ineffective

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Assistance and the Denial of Habeas Procedures as Remedy," at least nominally relate to the questions before this court. In his discussion of the constitutional right to counsel, though, Grinols spends the majority of his argument asserting his right to appointed counsel of his choice, his right to co-counsel in a dual representation scheme, and the merits of the attorney-client privilege in a post-conviction relief proceeding.

[2] Given this state of the briefing, we will address the arguments asserted by the state and by the public defender as amicus. To the extent that Grinols's arguments reach either of the questions accepted by us for review, those arguments will be addressed. However, because in a petition for hearing we will review only those issues accepted by this court,^{FN11} we will not address the remainder of Grinols's arguments.

FN11. Alaska R.App. P. 305(a)(1) provides:

Unless the order granting a hearing provides otherwise, hearing is granted as to all points raised in the petition (see Rule 303(b)(4)). (Emphasis added.)

A. Under the Due Process Clause of the Alaska Constitution, a Defendant Must Be Given an Opportunity To Challenge the Competency of Representation Provided by an Appointed Attorney

Who Represented the Defendant in a Post-Conviction Relief Action.

1. The right to counsel in a first post-conviction proceeding is of a constitutional nature; it may not be abridged by statute.

The state argues that the right to counsel in a post-conviction relief proceeding is statutory and therefore not subject to the guarantee of effective assistance of counsel. After discussing the original right to counsel envisioned by the drafters of the Alaska Constitution and *Gideon v. Wainwright*,^{FN12} the state analyzes the development of the right to counsel in post-conviction relief litigation. We review that history now to place the right to counsel in its proper historical context.

FN12. 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

In *Nichols v. State*,^{FN13} we first acknowledged that a defendant is entitled to representation at the hearing of a first application for post-conviction relief,^{FN14} although the court was divided in its reasoning. Justice Dimond based the court's opinion on equal protection grounds, stating that where a person seeking to have a sentence vacated or set aside under the criminal rules has the right apart from statute to hire representation for the hearing, a prisoner without funds to hire counsel for the hearing has the right to

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have counsel appointed.^{FN15} Justice Rabinowitz, in a concurring opinion, stated that once a hearing under the criminal rules to set aside a conviction is required, the contemplated hearing is adversarial in nature and that “[f]ailure to appoint counsel in such circumstances results *893 in fundamental unfairness to an indigent movant.”^{FN16} Justice Rabinowitz supported his concurrence with two alternate theories: First, the supervisory powers of this court over the criminal justice system require appointment of counsel to all indigent defendants in a hearing to set aside or vacate a sentence, thereby “giv[ing] recognition to the paramount importance of insuring the integrity and accuracy of [this court’s] fact-finding processes.”^{FN17} Alternatively, Justice Rabinowitz stated that denying appointment of counsel in this case was “fundamentally unfair and violative of the due process clause of article [I], section 7 of the Alaska Constitution.”^{FN18}

Donnelly v. State^{FN19} expanded the right articulated in *Nichols*. In *Nichols* we “held that an indigent prisoner seeking [post-conviction relief] must be afforded representation at a hearing for post-conviction for relief.”^{FN20} *Donnelly* held that “the counsel requirements compelled by *Nichols* must be extended to require representation at the time the initial application is filed.”^{FN21} We further stated, “[i]t is therefore essential that he be represented by *competent* counsel in the event that he is unable to afford an attorney.”^{FN22} Although *Donnelly* did not expound on the basis for the right to counsel, and in *McCracken v. State*^{FN23} we noted that “our ruling [in *Donnelly*] was compelled not by the Constitution, but rather by what we regarded to be an inherent procedural requirement of [Alaska] Criminal Rule 35.”^{FN24} we did not foreclose the existence of the constitutional right. We also stated that, although Criminal Rule 39(b), by its use of the term “defendant,” applied to appointment of counsel in pre-conviction proceedings, “the appointment of counsel in post-conviction relief proceedings is nevertheless mandated by the Criminal Rules.”^{FN25}

FN13. 425 P.2d 247 (Alaska 1967).

FN14. *Id.* at 255.

FN15. *Id.*

FN16. *Id.* at 256 (Rabinowitz, J., concurring).

FN17. *Id.*

FN18. *Id.*

FN19. 516 P.2d 396 (Alaska 1973).

FN20. *Id.* at 399 (summarizing the holding in *Nichols*).

FN21. *Id.*

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FN22. *Id.*(emphasis added).

FN23. 518 P.2d 85 (Alaska 1974).

FN24. *Id.* at 90 n. 14.FN25. *Id.* at 88 n. 2.v. *State*, 18 P.3d 71 (Alaska App.2001).FN27. *Id.* at 407-08.FN28. *Id.* at 410 (Bryner, C.J., concurring).

The court of appeals addressed the basis for the right to counsel in post-conviction relief proceedings in *Hertz v. State*.^{FN26} In *Hertz*, the appeals court stated that it had been suggested "that the Alaska Constitution guarantees a right to counsel in post-conviction proceedings," citing the divided court in *Nichols*, but that subsequent cases had indicated "that an indigent defendant's right to the appointment of counsel in presenting his or her first application for post-conviction relief [was] based solely on the rules of criminal procedure,"^{FN27} citing *McCracken* and *Donnelly*. In his concurrence to *Hertz*, then-Chief Judge Bryner stated that "[i]nasmuch as the supreme court has decided that representation by counsel [in an initial application for post-conviction relief] is a matter of right, there is simply no basis for concluding that post-conviction relief applicants should receive anything less than the full, effective assistance of counsel that is constitutionally guaranteed."^{FN28}

FN26. 755 P.2d 406 (Alaska App.1988), *superseded on other grounds by rule as stated in Griffin*

The state argues that under *Nichols* and *Donnelly* the court of appeals was wrong in its conclusion in *Hertz* and that the right to counsel under AS 18.85.100(c) is not of a constitutional nature and does not give rise to a due process right to counsel. As this right is either statutory or granted under this court's supervisory powers, the state asserts, the right can be restricted, as other rights have been.

[3] We start with the observation that in *Nichols* the majority—both Justice Dimond and Justice Rabinowitz^{FN29}—found that the *894 right to representation of an indigent prisoner bringing an application for post-conviction relief was constitutionally-based. Next, in *Donnelly* we held that it was "essential" that an indigent prisoner bringing an application for post-conviction relief be represented from the time of the filing of the claim.^{FN30} The right to representation, first articulated in *Nichols*, was expanded in *Donnelly* "to assure a full and fair exploration of the claim."^{FN31} This language shows that our concern for fairness, an inherent concern in the criminal justice system, prompted the guarantee of a right to counsel in post-conviction relief litigation. And as

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then-Chief Judge Bryner of the court of appeals stated, it appears as though "representation by counsel is a matter of right." FN32 To the extent that any of our prior decisions has cast doubt upon the constitutional underpinning of the right to counsel in post-conviction relief actions, we hold today that the right to counsel in a first application for post-conviction relief is of a constitutional nature, required under the due process clause of the Alaska Constitution.

FN29. Only Chief Justice Nesbett, the third member of what was at the time a three-member court, disagreed with the holding that the right to representation was constitutionally-based. *Nichols*, 425 P.2d at 256.

FN30. 516 P.2d at 399.

FN31. *Id.*

FN32. *Hertz*, 755 P.2d at 410 (Bryner, C.J., concurring).

2. The Alaska Constitution's due process clause requires that counsel in a post-conviction relief application be effective.

[4] We turn now to the question whether the Alaska Constitution's due process clause requires that counsel in a first application for post-conviction relief be

effective.

The Alaska Constitution guarantees that "[n]o person shall be deprived of life, liberty, or property, without due process of law." FN33 We have adopted the balancing test from *Mathews v. Eldridge* FN34 to determine what process is due: FN35

FN33. Alaska Const., art. I, § 7.

FN34. 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

FN35. *In re K.L.J.*, 813 P.2d 276, 279 (Alaska 1991).

Identification of the specific dictates of due process generally involves consideration of three distinct factors: the private interest affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail. FN36

FN36. *Id.* (quoting *Keyes v. Humana Hosp. Alaska, Inc.*, 750 P.2d 343, 353 (Alaska 1988)).

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[5][6] The private interest affected in a case in which a defendant seeks to bring an ineffective counsel claim against an attorney appointed to represent the defendant in a post-conviction relief proceeding is the defendant's interest in effective representation. An indigent defendant is guaranteed legal representation in a first application for post-conviction relief both under the Alaska Constitution ^{FN37} and under AS 18.85.100(c).^{FN38} If defendant's post-conviction relief counsel were ineffective, viable challenges to a conviction would be foreclosed and relief would be denied if a second petition for post-conviction relief were barred. Without relief, there is no guarantee of a fair post-conviction relief action, depriving the constitutional and statutory right to representation of any substance. The risk of erroneous deprivation of a person's right to effective representation, then, is great.

FN37. *See supra* Part IV.A.1.

FN38. AS 18.85.100(c) provides, in part:

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

(1) an untimely or successive

application for post-conviction relief under AS 12.72[.]

The burden on the state, though, is also appreciable. Administratively, the state would be required to address second post-conviction relief petitions to determine if counsel for a first post-conviction relief petition*895 was inadequate. Rather than the court simply denying the petition outright as would otherwise be required under AS 12.72.020(a)(6),^{FN39} the state would be required to litigate the petition. This increased administrative burden represents an increased fiscal burden as well. The possibility that prisoners will file frivolous claims if second applications raising ineffective counsel claims are allowed would increase the state's burden.

FN39. AS 12.72.020(a)(6) provides: A claim may not be brought under AS 12.72.010 [post-conviction relief] or the Alaska Rules of Criminal Procedure if a previous application for post-conviction relief has already been filed under this chapter or under the Alaska Rules of Criminal Procedure.

These competing interests are both weighty, and the balance is close, but this court's previous decisions and the decisions of the United States Supreme Court concerning effective representation provide guidance. Over thirty years ago, the Supreme Court stated, "It has long been recognized that the right to counsel is

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the right to the effective assistance of counsel.”^{FN40} Likewise, we have recognized the right to effective representation where representation is guaranteed,^{FN41} and the court of appeals has stated that “courts must vigilantly protect this right to effective representation.”^{FN42} Like the court of appeals, we find persuasive the reasoning of the Supreme Court of Connecticut that “it would be absurd [for a defendant] to have the right to appointed counsel who is not required to be competent.”^{FN43} Given that a right to counsel would be meaningless if that counsel were not effective, we hold that the due process clause of the Alaska Constitution requires that a defendant be given a chance to challenge the effectiveness of counsel in a second petition for post-conviction relief.

FN40. *McMann v. Richardson*, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970).

FN41. *Risher v. State*, 523 P.2d 421, 423 (Alaska 1974) (“The assistance must be ‘effective’ to be of any value.”).

FN42. *Johnson v. State*, 24 P.3d 1267, 1267 (Alaska App.2001).

FN43. *Grinols v. State*, 10 P.3d 600, 619-20 (Alaska App.2000) (quoting *Iovieno v. Comm’r of Corrs.*, 242 Conn. 689, 699 A.2d 1003, 1010 (1997)) (alteration in

original).

We conclude, therefore, that the burden on the state is not enough to overcome a defendant's right to effective representation and the risk that that right would be violated if the defendant were unable to challenge an attorney's effectiveness. Furthermore, the four-part test imposed by the court of appeals upon a defendant raising an ineffective counsel claim will tend to screen out frivolous claims. We conclude that the right to fair proceedings requires effective counsel at those proceedings.

3. The extent of the federal due process right to counsel does not affect the extent of the Alaska due process right to counsel.

The state argues that the due process right to counsel under the federal Constitution is not as expansive as the court of appeals found it to be in this case. The state cites *Ross v. Moffitt*,^{FN44} *Pennsylvania v. Finley*,^{FN45} and *Coleman v. Thompson*,^{FN46} arguing that these cases hold that there is no federal right to counsel in a post-conviction relief proceeding and that there can be no challenge to the effectiveness of representation in such proceedings.

FN44. 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974).

Westlaw.

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H

Holden v. State
Alaska App.,2007.

Court of Appeals of Alaska.
Eric HOLDEN, Appellant,
v.

STATE of Alaska, Appellee.
No. A-9797.

Dec. 7, 2007.

Background: Indigent defendant filed petition for post-conviction relief and requested appointment of counsel. The Superior Court, Third Judicial District, Anchorage, Mark Rindner, J., denied petition as time-barred and denied request for counsel. Defendant appealed.

Holding: The Court of Appeals, Mannheimer, J., held that defendant had constitutional right to appointment of counsel for purpose of assessing whether arguably time-barred post-conviction petition came within statutory exception to one-year time bar.

Reversed and remanded.

West Headnotes

[1] Criminal Law 110 ⇨1602

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)1 In General

110k1600 Counsel

110k1602 k. Right to

Counsel. Most Cited Cases

Indigent defendant had state constitutional right to appointment of counsel for limited purpose of assessing whether post-conviction petition filed more than one year after defendant's convictions for escape and assault became final came within statutory exception to one-year time bar. Const. Art. 1, § 11; AS 12.72.020.

[2] Criminal Law 110 ⇨1602

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)1 In General

110k1600 Counsel

110k1602 k. Right to

Counsel. Most Cited Cases

When an indigent defendant's first petition for post-conviction relief is challenged as time-barred, the defendant has a constitutional right to the assistance of counsel when responding to that challenge. Const. Art. 1, § 11; AS 12.72.020.

*815 Eric Holden, in propria persona, Wasilla, for the Appellant.
Douglas H. Kossler, Assistant Attorney

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General, Office of Special Prosecutions and Appeals, Anchorage, and Talis J. Colberg, Attorney General, Juneau, for the Appellee.

*816 Joshua P. Fink, Public Advocate, Anchorage; Margi Mock, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for Amici Curiae.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION

MANNHEIMER, Judge.

The Alaska Legislature has enacted a statute of limitations, AS 12.72.020(a)(3)-(4), that sets time limits for filing a petition for post-conviction relief. The legislature has also declared that an indigent defendant who files an untimely petition for post-conviction relief is not entitled to the assistance of counsel at public expense. *See* AS 18.85.100(c).

The question presented to this Court is whether, when an indigent defendant files a petition for post-conviction relief that appears to be untimely under the rules set forth in AS 12.72.020, the Alaska Constitution nevertheless guarantees the defendant a limited right to counsel: the right to have a court-appointed lawyer investigate whether the defendant might be able to claim the benefit of one of the exceptions or tolling periods specified in

that statute of limitations.

For the reasons explained here, we conclude that the Alaska Constitution does guarantee this limited right to counsel.

Background facts

Eric Holden is an indigent prisoner who is currently attempting to litigate a petition for post-conviction relief in the superior court. In this petition, Holden seeks relief from his convictions for second-degree escape and fourth-degree assault.

This Court affirmed Holden's convictions on direct appeal in *Holden v. State*, Alaska App. Memorandum Opinion No. 4148 (November 10, 1999), 1999 WL 34002424.

Holden's convictions became final on May 24, 2000, after the Alaska Supreme Court denied Holden's petition for hearing. FN1

FN1. *See* Appellate Rules 507(b) and 512(a)(2)[b].

Nearly six years later-on May 2, 2006-Holden filed his petition for post-conviction relief, accompanied by a request for court-appointed counsel to assist him in litigating this petition.

Under AS 12.72.020(a)(3)(A), if a defendant seeks direct appellate review of a criminal conviction, and the conviction is

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affirmed, any petition for post-conviction relief relating to that conviction must be filed within one year of the date of the final appellate court decision affirming the conviction. Because Holden did not file his petition for post-conviction relief until nearly six years after his conviction became final on appeal, the superior court dismissed Holden's petition for post-conviction relief as untimely under AS 12.72.020(a)(3)(A). And, based on the conclusion that Holden's petition was untimely, the superior court denied Holden's request for court-appointed counsel.

The question presented to this Court is whether, before the superior court ruled on the timeliness of Holden's petition, Holden was entitled to have an attorney appointed at public expense for the limited purpose of investigating whether Holden might be able to claim the benefit of one of the exceptions or tolling periods listed in AS 12.72.020.

Why we conclude that the Alaska Constitution guarantees this limited right to counsel

[1] In *Grinols v. State*, 74 P.3d 889, 894 (Alaska 2003), the Alaska Supreme Court ruled that indigent defendants have a constitutional right (under the due process clause of the Alaska Constitution) to the assistance of counsel when litigating a first petition for post-conviction relief.

However, as explained above, the Alaska Legislature has declared that these indigent defendants have no right to counsel if their petitions are untimely under AS 12.72.020.

The *Grinols* decision does not address the question of whether the constitutional right to counsel extends even to defendants who fail to file their petitions for post-conviction relief within the time limits established in AS 12.72.020. Indeed, if a defendant's petition is truly time-barred, there would seemingly be nothing for an attorney to litigate.

But in cases where either the State or the superior court identifies a defendant's petition as time-barred, the defendant has a crucial need for the assistance of counsel. This need arises during the litigation of the timeliness issue—for if the defendant loses this issue, the litigation is over.

More than thirty years ago, in *Donnelly v. State*, 516 P.2d 396 (Alaska 1973), the Alaska Supreme Court confronted a similar right-to-counsel issue arising from a different aspect of post-conviction relief law.

In *Donnelly*, the supreme court was forced to address a problem created by their earlier decision in *Nichols v. State*, 425 P.2d 247 (Alaska 1967). *Nichols* held that an indigent defendant seeking post-conviction relief was entitled to counsel at public expense to assist them at the evidentiary hearing on their petition. *Id.* at 255. The following year (1968), the

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Because of the time limitations set forth in AS 12.72.020, and because AS 18.85.100(c) denies the assistance of counsel to defendants who are pursuing time-barred petitions for post-conviction relief, when an indigent defendant files a petition for post-conviction relief that is arguably time-barred, the defendant faces a situation similar to the one that confronted the indigent petitioner in *Donnelly*. The law gives the defendant a right to the assistance of counsel at public expense, but this right is conditioned on obtaining a favorable ruling from the trial court on the timeliness issue. That is, the defendant is *818 entitled to the assistance of counsel only if they first convince the trial court that their petition is timely under the provisions of the statute.

Resolution of the timeliness issue can involve considerably more than a simple comparison of calendar dates.

Under AS 12.72.020(a)(3)(A), the timeliness of a petition for post-conviction relief hinges on the date of "the entry of judgment of ... conviction" or, if an appeal was filed, the date on which "the [appellate] court's decision [became] final under the Alaska Rules of Appellate Procedure". The determination of these dates requires an understanding of, and sometimes a legal interpretation of, various provisions of the Alaska Criminal Rules and the Alaska Appellate Rules.

Moreover, AS 12.72.020(b) codifies several exceptions to the limitation periods

specified in AS 12.72.020(a)(3) and (a)(4). It is readily foreseeable that there will be situations where legal expertise will be needed to understand and apply these exceptions.

For these reasons, we conclude that an indigent defendant pursuing a first petition for post-conviction relief is entitled to the assistance of counsel for the purpose of assessing (and arguing) whether the petition is timely.

Our ruling on this issue was foreshadowed by our decision in *One v. State*, 127 P.3d 853 (Alaska App.2006).

In *One*, we confronted a situation where an attorney appointed to represent a petitioner for post-conviction relief sought permission to withdraw and filed a certificate of "no arguable merit" under Criminal Rule 35.1(e)(2).^{FN3} This certificate was based on the attorney's assertion that all of the petitioner's claims were time-barred and that, therefore, there was no point in investigating the underlying merit of those claims. *One*, 127 P.3d at 853-54.

FN3. See *Griffin v. State*, 18 P.3d 71, 75 (Alaska App.2001), where this Court interpreted Criminal Rule 35.1(e) to require an assertion that all of the petitioner's potential claims had no arguable merit.

We held that, in such circumstances—that is,

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We do not retain jurisdiction of this case.

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END OF DOCUMENT

Alaska State Legislature

Representative Max F. Gruenberg
Representative Carl Gatto



State Capitol
Juneau, Alaska
99801-1182

SPONSOR STATEMENT AND SECTIONAL ANALYSIS

The purpose of this amendment is to update the arson and criminally negligent burning statutes to reflect a serious problem affecting communities in Alaska with increasing frequency. Often, fires are being lit in dumpsters, trash sheds, and other small structures which are close in proximity or adjacent to buildings or homes that as a result become damaged.

Sec. 7 amends AS 11.46.410(a) by changing the mental state requirement for 2nd degree arson from "intentional" to "knowingly". This change facilitates prosecuting those individuals who set fire to objects adjacent to other buildings or homes, like dumpsters and small sheds, which results in damage to adjacent buildings or homes. This change lessens the prosecutor's burden from proving that the individual acted with the "conscious objective" to "cause the result" to proving that the individual was "aware that the conduct is of that nature or that the circumstances exist" that could lead to the result. In addition, while voluntary intoxication is a defense to negate an "intentional" state of mind, it is no defense to "knowingly".

Sec. 8 amends AS 11.46 by adding a new criminal offense of criminally negligent burning in the first degree. This addition ensures that serial arsonists are treated appropriately by providing that individuals previously convicted in this state or another state with similar offenses will be charged with a class C felony.

Sec. 9 amends 11.46.430 by making the current criminally negligent burning statute a crime in the second degree, retaining its classification as a class A misdemeanor.

Sec. 17 amends AS 12.55.127(c) to ensure that serial "fire bugs" receive some concurrent jail time when charged with multiple offenses brought in the same proceeding. The discretion for imposition of the sentence remains with the judge.

Mountain View Community Council Written Reports

Clark Middle School Renewal 1302 Labar Street

The new Clark Middle School is starting to take shape. The installation of the structural steel has begun and the exterior walls should start going up within the next couple of weeks. There will be an increasing level of activity on the site for the rest of the spring and into the summer months.

Contact: Edie Knapp
Phone: 348-5207
E-mail: knapp_edie@asdk12.org

Kids' Corps, Inc./Head Start 3350 Commercial Drive (in the Success by Six Bldg.)

March is a fun month with several closures. The center will be closed for Spring Break from Friday, March 7th through Friday, March 14th. We will also be closed on Friday, March 28th for parent/teacher conferences. The children will be learning about growing and planting things "Life on the Farm." This month's Volunteer week is scheduled for March 17th through the 21st. If you would like a tour or need an application, please contact Nancy at 646-7884 or Ronnie at 279-2021. Don't forget to set your clocks forward one hour on Sunday, March 9. Daylight savings time begins. Enjoy the month as we experience warmer weather and the kids get out of doors more. Thank You.

Contact: Ronnie Brown
Phone: 279-2021

Contact: Nancy Schjenken
Phone: 646-7884

Mountain View Community Patrol 3142 Mountain View Drive

Someone is, again, setting fires in the small garbage sheds. I was the victim of one of these fires. This happened at approx 4:30 AM on March 6th. We were lucky that some people driving past stopped, knocked on our door and alerted us while calling the Fire Department. Not only did the small structure burn, it went up the outside of the house, there by causing damage to the house, but also resulting in smoke and water damage. Someone knows who is doing this type of stuff, and they need to report it before someone really gets hurt. Please, if you see this happening, call 911. This is serious.

Fred Schriener
Mountain View Community Patrol

Mountain View Job Center - a satellite center of the Anchorage Job Center Network 315 N. Price Street, lower level

People in job search in February were successful finding a job with the assistance of a job counselor 57% of the time. Vet Rep and DVR counselors available by *appointment*, and the *Youth Counselor for Employment Security* is available at 713-6074.

There were 522 clients using the Resource Room at the Mountain View Job Center in February [435 adults (22 and over) and 87 youth (16-21)]. NO COST FOR SERVICES.

3/28/2008

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