

HB

323



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
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Rep. Lindsey Holmes
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MEMORANDUM

Date: April 7, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for HB323

Attached please find the following documents:

- Governor's transmittal letter
- CSHB323(JUD) 25-GH2038.O
- HJUD Letter of Intent
- Legal fax re: HJUD Amendments
- Work Draft CSHB323(JUD) 25-GH2038\L
- Legal fax re: HJUD Amendments
- Work Draft CSHB323(JUD) 25-GH2038\K
- Amendments from version \E
- Work Draft CSHB323(JUD) 25-GH2038\E
- Fiscal Notes
 - HSS - 0
 - DPS - 0
 - COR - Indeterminate
 - LAW - \$
 - ADM - 0
 - ADM - 0
- HB323 25-GH2038\A
- Back-up re: amendments
- Relevant Statutes
- HJUD Committee Report

SARAH PALIN
GOVERNOR

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STATE OF ALASKA
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January 15, 2008

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making important changes to Alaska criminal law. These changes would continue the state's efforts to make Alaska a safer and healthier place to live and work.

Domestic and other forms of violence are highly prevalent in Alaska. It is shocking that women are murdered by men in Alaska at one of the highest rates in the country. Domestic violence, and other forms of violence, often begin by a perpetrator committing less serious assaults, and then progressing to more harmful conduct. Most domestic violence assaults are prosecuted as assault in the fourth degree, which is a class A misdemeanor. The bill would address the progressive nature of violence by providing that a person convicted of assault in the fourth degree (except under the theory of recklessly placing another in fear) who has two or more convictions for serious crimes against a person in the past 10 years, would be guilty of a class C felony. The maximum term of incarceration for a class C felony is five years.

The procedure for protecting the public from a person, who as a result of a mental disease or defect is incompetent to be tried for a crime, has some cracks that need to be filled. Two recent cases have highlighted the problem. For example, a person charged with a serious felony was found to be incompetent to be tried for the offense. After a period at Alaska Psychiatric Institute, the person was released, returned to the person's home community, and again committed the same serious felony. The bill would address this problem in several ways; first it requires a person found incompetent to be referred to the commissioner of health and social services for evaluation and treatment. It would also require ten days notice to the prosecuting

The Honorable John Harris
January 15, 2008
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authority by the professional in charge of the person's care before the person may be released.

The bill would also clarify the intent of the Legislature when it provided, in the late 1980s, that a third conviction for theft within a five year period would increase the severity of the crime one level. At that time it was generally assumed, for purposes of subsequent enhancement, that a conviction occurs at the time the sentence was imposed. The bill would provide expressly in statute that, in looking back to the prior convictions for purposes of enhancing the current theft, the court should look back to the date the defendant was sentenced for the prior offenses.

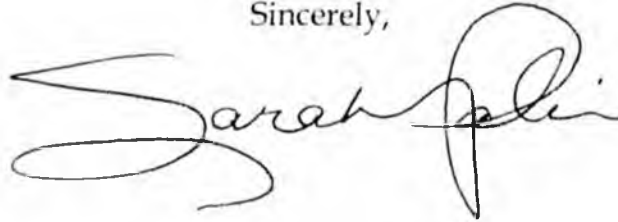
Since early statehood, Alaska has had a statutory prohibition on the state prosecuting and punishing a person, including a corporation, for an act that another jurisdiction has already prosecuted. This policy is not based on constitutional law; the state and federal constitutional prohibitions against being placed twice in jeopardy for the same act do not prohibit distinct government authorities from prosecuting the same act under different bodies of law. Recent events have suggested a reconsideration of this policy. The federal criminal prosecution of misconduct by public officials in Alaska is an example of crime that might also be pursued under state law. The state should be able to protect its unique interests, even when the federal government has acted to redress federal interests. Repeal of AS 11.71.310 (Bar to Prosecution) and AS 12.20.010 (Conviction or Acquittal Elsewhere as Bar) would assist in that endeavor.

The bill would make other changes in criminal law. One would allow a court to issue a search warrant by telephone or other reliable means rather than an in person hearing. Telephonic communications today are sophisticated enough to allow for a fair hearing without requiring a personal appearance; most Alaskans rely on telephonic communications for many of their important affairs. The bill would also give judges more discretion to allow a later return of a search warrant inventory to allow for long-term investigations and protection of persons working with law enforcement. Another provision adds the substances commonly know as Soma and Ambien to Schedule IVA of Alaska's prohibited substances. Recent injuries from driving impaired by misuse of these substances support their addition to Alaska's drug schedules as controlled substances.

The Honorable John Harris
January 15, 2008
Page 3

Enactment of this bill into law would protect Alaskans and help the criminal justice system function fairly and at the same time more efficiently. I urge your prompt and favorable consideration of it.

Sincerely,

A handwritten signature in black ink, reading "Sarah Palin". The signature is written in a cursive style with a large, looping "S" and a distinct "P" for "Palin".

Sarah Palin
Governor

Enclosure

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

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Chairman

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Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

April 6, 2008

Letter of Intent – House Bill 323
By the House Judiciary Committee

Section 30 of this Act corrects a misunderstanding in the applicability provision in ch. 24, section 36(e), SLA 2007. This section addressed the applicability of the newly adopted AS 12.72.025, which adopted a one-year statute of limitation on applications for post-conviction relief based on the claim that the applicant's attorney in his or her first application for post-conviction relief was ineffective. These applications are commonly called *Grinols* applications.

The purpose of AS 12.72.025 was to codify a statute of limitation with respect to second applications for post-conviction relief. Second applications for post-conviction relief raising a claim that an applicant's counsel rendered ineffective assistance in the first application were authorized by *Grinols v. State*, 10 P.3d 600 (Alaska App. 2000), *aff'd*, 74 P.3d 889 (Alaska 2003). *Grinols* also imposed a requirement of "due diligence" in bringing second applications. The court in *Grinols* assumed, but expressly declined to decide, that the existing statute-of-limitations in AS 12.72.020 applied in *Grinols*'s second application.

The purpose of AS 12.72.025 was to codify for second applications the same one-year statute of limitation as now exists for first applications, and was not to expand it or overrule *Grinols*'s due diligence requirement. But the applicability clause can be misinterpreted to mean that if an application was dismissed at any time prior to July 1, 2007, then a second application will be permitted if filed by July 1, 2008, regardless of how much time passed between the first and second applications, or whether the applicant had exercised due diligence in bringing it. That interpretation is inconsistent with the legislature's purpose in enacting AS 12.72.025 and inconsistent with the court's holding in *Grinols*.

Section 30 of this Act specifically corrects such a mistaken interpretation.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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State Capitol, Room 120
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Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: 2029

Number of pages including cover:

From: Jane Pierson

Date: April 6, 2008

Re: Final for HB 323 from version 25-GH20328/L.

Please go final on the above-referenced bill with the following amendments:

1. P. 2, L. 27 delete "10" insert "5"
P. 2, L. 28 delete "24" insert "12"
P. 2, L. 28 delete "12" insert "6"
Conform sections (2) and (3)
2. P. 3, L. 5 change 10 year look-back to 15 years.
3. P. 3, L. 13 delete "3000" insert "10,000"
L. 15 delete "4000" insert "10,000"
L. 18 delete "5000" insert "10,000"
L. 21 delete "6000" insert "10,000"
L. 24 delete "7000" insert "10,000"

4. P.6, L. 11 after "convicted" insert on two separate occasions."

Thank you!!!

Amendment #2

~~Page 3~~

Page 3

ADOPTED.

line 13 delete 3000,
insert 10,000

line 15 delete 4000
insert ~~5000~~ 10K

line 18 delete 5000
insert ~~20,000~~ 10K

line 21 delete 6000
insert ~~25,000~~ 10K

line 24 delete 7000
insert ~~30,000~~ 10K.

CS FOR HOUSE BILL NO. 323(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to 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 certain
5 persons who lend money on secondhand articles; relating to arson and criminally
6 negligent burning; relating to defenses for the detention of persons suspected of
7 committing concealment of merchandise or theft; relating to controlled substances;
8 relating to the determination of time of a conviction; relating to issuance of search
9 warrants; relating to persons found incompetent to stand trial concerning criminal
10 conduct; relating to probation for certain offenses; relating to restitution for fish and
11 game violations; relating to aggravating factors at sentencing; relating to post-conviction
12 relief proceedings; relating to criminal extradition authority of the governor; removing

1 the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of
2 Criminal Procedure, relating to execution of warrants, and Rule 35.1, Alaska Rules of
3 Criminal Procedure; and providing for an effective date."

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) except as provided in (3) of this subsection, guilty of a class A
27 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters
28 of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

29 (2) guilty of a class C felony if the quantity of alcoholic beverages is
30 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12

1 gallons or more of malt beverages; or

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

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

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

10 (1) shall impose a minimum sentence of imprisonment of

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

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

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

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

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

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

27 (2) may not

28 (A) suspend execution of sentence or grant probation except on
29 the condition that the person

30 (i) serve the minimum imprisonment under (1) of this
31 subsection; and

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(ii) pay the minimum fine required under (1) of this subsection; or

(B) suspend imposition of sentence.

(h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this section, the court

(1) shall impose a fine of not less than \$10,000 and a minimum sentence of imprisonment of

(A) 120 days if the person has been previously convicted once;

(B) 240 days if the person has been previously convicted two times;

(C) 360 days if the person has been previously convicted three or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on the condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; and

(ii) pay the minimum fine required under (1) of this subsection; or

(B) suspend imposition of sentence.

(i) In (g) of this section, "previously convicted" means having been convicted, within the 10 years preceding the date of the present offense, of an offense under (b) or (e) of this section or a law or ordinance of another jurisdiction having elements similar to those offenses.

(j) In (h) of this section, "previously convicted" means having been convicted, within the 10 years preceding the date of the present offense, of a felony offense under (b) or (e) of this section or a law or ordinance of another jurisdiction having elements similar to those felony offenses.

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

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

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

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

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

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

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

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

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

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

25 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
26 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
27 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
28 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
29 similar elements is a conviction of an offense having elements similar to those of an
30 offense defined as such under Alaska law at the time the offense was committed. The
31 court shall consider the date of a prior conviction as occurring on the date that

1 sentence is imposed for the prior offense.

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

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

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

7 **Sec. 11.46.427. Criminally negligent burning in the first degree.** (a) A
8 person commits the crime of criminally negligent burning in the first degree if the
9 person

10 (1) violates AS 11.46.430; and

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

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

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

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

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

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

22 (30) carisprodol;

23 (31) zolpidem;

24 (32) zopiclone.

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

26 (a) A judicial officer may issue a search warrant upon a showing of probable
27 cause, supported by oath or affirmation, and particularly describing the place to be
28 searched and the thing to be seized. The court may issue a search warrant for a
29 place or property located either in the state or outside the state.

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

31 (a) A judicial officer may issue a search warrant upon the sworn oral

1 testimony of a person communicated by telephone or other appropriate means, or
2 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER
3 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

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

8 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
9 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH AN
10 ONGOING INVESTIGATION].

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

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

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

23 (b) On or before the expiration of the initial 90-day period of commitment, the
24 court shall conduct a hearing to determine whether or not the defendant remains
25 incompetent. If the court finds by a preponderance of the evidence that the defendant
26 remains incompetent, the court may recommit the defendant for a second period of 90
27 days. The court shall determine at the expiration of the second 90-day period whether
28 the defendant has become competent. If, at the expiration of the second 90-day period,
29 the court determines that the defendant continues to be incompetent to stand trial, the
30 charges against the defendant shall be dismissed without prejudice, and continued
31 commitment of the defendant shall be governed by the provisions relating to civil

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

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

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

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

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

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

29 (8) the defendant's prior criminal history includes conduct involving
30 aggravated assaultive behavior or repeated instances of assaultive behavior; in this
31 paragraph, "aggravated assaultive behavior" means assault that is a felony

1 under AS 11.41, or a similar provision in another jurisdiction;

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

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

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

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

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

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

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

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

26 (2) "governor" includes

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

29 (B) the lieutenant governor or the head of a principal
30 department in the executive branch appointed by the governor to act on
31 behalf of the governor in performing extradition duties under this

1 chapter; the appointment shall be in writing and filed with the lieutenant
2 governor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (A) was not known within

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

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

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

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

17 (C) is not impeachment evidence; and

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

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

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

24 (1) the application is timely; and

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

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

28 (b) In addition to a penalty imposed under (a) of this section or any other
29 penalty for violation of this title or a regulation adopted under this title, a person
30 who is convicted of unlawfully taking an animal listed in this subsection may be
31 ordered by the court to pay restitution to the state in the amount set out in this

1 subsection for each animal unlawfully taken:

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

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

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

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

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

31 * Sec. 28. AS 47.30.780 is amended to read:

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

6 * **Sec. 29.** AS 47.30.780 is amended to add a new subsection to read:

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

10 * **Sec. 30.** The uncodified law of the State of Alaska enacted in sec. 36(c), ch. 24, SLA
11 2007, is amended to read:

12 (c) AS 12.72.025, enacted by sec. 25, **ch. 24, SLA 2007** [OF THIS ACT],
13 applies to offenses committed before, on, or after the effective date of sec. 25, **ch. 24,**
14 **SLA 2007** [OF THIS ACT]. A person whose application for post-conviction relief was
15 denied before the effective date of sec. 25, **ch. 24, SLA 2007** [OF THIS ACT] has
16 until July 1, 2008, to file a claim described in AS 12.72.025. **This subsection does not**
17 **authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal**
18 **Procedure that is not otherwise available under AS 12.72, the Alaska Rules of**
19 **Criminal Procedure, or other provision of law.**

20 * **Sec. 31.** AS 12.35.015(f) is repealed.

21 * **Sec. 32.** AS 11.71.310 and AS 12.20.010 are repealed.

22 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

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

26 (b) **Execution and Return with Inventory.** The warrant shall be executed
27 and returned within **30** [10] days after its date **of issuance.** However, upon sworn
28 application made before the expiration of the initial **30** [10] day period or any
29 subsequent extension, the court may for good cause extend the execution period for a
30 reasonable time not to exceed **30** [10] days. **Good cause includes protecting the**
31 **confidentiality of an ongoing investigation and protecting a person working with**

1 **law enforcement authorities on an investigation.** The officer taking property under
2 the warrant

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

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

8 The return shall be made promptly and shall be accompanied by a
9 written inventory of any property taken as a result of the search pursuant to or in
10 conjunction with the warrant. The inventory shall be made in the presence of the
11 applicant for the warrant and the person from whose possession or premises the
12 property was taken, if they are present, or in the presence of at least one credible
13 person other than the applicant for the warrant or the person from whose possession or
14 premises the property was taken, and shall be signed by the officer under the penalty
15 of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a
16 notary public. The magistrate or judge or the court to which the return is made shall
17 upon request deliver a copy of the inventory to the person from whom or from whose
18 premises the property was taken and to the applicant for the warrant.

19 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

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

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

29 **APPLICABILITY.** (a) Sections 1 - 4, 9, 12, 18 - 20, 25 - 27, and 32 of this Act apply
30 to an offense occurring on or after the effective date of this section. References to previous
31 convictions in secs. 3 and 4 of this Act apply to convictions occurring before, on, or after the

1 effective date of those sections.

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

4 (c) Sections 13, 14, 31, and 33 of this Act apply to search warrants applied for on or
5 after the effective date of this section, regardless of whether the offense occurred before, on,
6 or after the effective date of this section.

7 (d) Sections 15 - 17, 28, and 29 of this Act apply to procedures occurring after the
8 effective date of this section, regardless of whether the offense occurred before, on, or after
9 the effective date of this section.

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

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

15 (g) Sections 22 - 24 and 34 of this Act apply to applications submitted on or after the
16 effective date of this section.

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

19 **RETROACTIVITY.** Section 30 of this Act is retroactive to July 1, 2007.

20 * **Sec. 37.** Sections 30 and 36 of this Act take effect immediately under AS 01.10.070(c).

21 * **Sec. 38.** Except as provided in sec. 37 of this Act, this Act takes effect July 1, 2008.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: April 4, 2008

Re: Another draft of HB 323

Might you please draft me another CS for HB 323 (25-GH2038\K) to include amendment K.2. The bill is back up in committee on Sunday after the floor session.

Thank you!!!!

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 323(JUD), Draft Version "K"

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

2 Insert "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;"

5

6 Page 2, following line 19:

7 Insert new bill sections to read:

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

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

11 (1) except as provided in (3) of this subsection, guilty of a class A
12 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters
13 of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

14 (2) guilty of a class C felony if the quantity of alcoholic beverages is
15 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12
16 gallons or more of malt beverages; or

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

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

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

1 court

2 (1) shall impose a minimum sentence of imprisonment of

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

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

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

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

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

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

19 (2) may not

20 (A) suspend execution of sentence or grant probation except on
21 the condition that the person

22 (i) serve the minimum imprisonment under (1) of this
23 subsection; and

24 (ii) pay the minimum fine required under (1) of this
25 subsection; or

26 (B) suspend imposition of sentence.

27 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this
28 section, the court

29 (1) shall impose a fine of not less than \$10,000 and a minimum
30 sentence of imprisonment of

31 (A) 120 days if the person has been previously convicted once;

1 (B) 240 days if the person has been previously convicted two
2 times;

3 (C) 360 days if the person has been previously convicted three
4 or more times;

5 (2) may not

6 (A) suspend execution of sentence or grant probation except on
7 the condition that the person

8 (i) serve the minimum imprisonment under (1) of this
9 subsection; and

10 (ii) pay the minimum fine required under (1) of this
11 subsection; or

12 (B) suspend imposition of sentence.

13 (i) In (g) of this section, "previously convicted" means having been convicted,
14 within the 10 years preceding the date of the present offense, of an offense under (b)
15 or (e) of this section or a law or ordinance of another jurisdiction having elements
16 similar to those offenses.

17 (j) In (h) of this section, "previously convicted" means having been convicted,
18 within the 10 years preceding the date of the present offense, of a felony offense under
19 (b) or (e) of this section or a law or ordinance of another jurisdiction having elements
20 similar to those felony offenses.

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

23

24 Renumber the following bill sections accordingly.

25

26 Page 10, following line 2:

27 Insert new bill sections to read:

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

29 (a) A court that convicts a person of an offense under this title or a regulation
30 adopted under this title, [OR] another law or regulation of this state, [OR] a municipal
31 ordinance that regulates the driving of vehicles, or a violation of AS 04.16.050 shall

1 forward a record of the conviction to the department within five working days. A
 2 conviction of a standing or parking offense need not be reported.

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

4 (a) Notwithstanding another provision of law, with the consent of the state and
 5 the defendant, the court may elect to proceed in a criminal case under AS 04.16.200(b)
 6 or (e), AS 28.35.030, or 28.35.032, including the case of a defendant charged with
 7 violating the terms of probation, under the procedure provided in this section and
 8 order the defendant to complete a court-ordered treatment program. The state may not
 9 consent to a referral under this subsection unless the state has consulted with the
 10 victim and explained the process and consequences of the referral to the victim. A
 11 court may not elect to proceed under this section if the defendant has previously
 12 participated in a court-ordered treatment program under this section two or more
 13 times."

14
 15 Renumber the following bill sections accordingly.

16
 17 Page 11, line 25:

18 Delete "secs. 20 and 21"

19 Insert "secs. 22 and 23"

20
 21 Page 11, line 26:

22 Delete "sec. 22"

23 Insert "sec. 24"

24
 25 Page 12, line 1:

26 Delete "Sections 1, 2, 7, 10, 16 - 18, 23, and 28"

27 Insert "Sections 1- 4, 9, 12, 18 - 20, 25 - 27, and 32"

28
 29 Page 12, line 2, following " section.":

30 Insert "References to previous convictions in secs. 3 and 4 of this Act apply to
 31 convictions occurring before, on, or after the effective date of those sections."

1

2 Page 12, line 3:

3 Delete "Section 6"

4 Insert "Section 8"

5

6 Page 12, line 5:

7 Delete "Sections 11, 12, 27, and 29"

8 Insert "Sections 13, 14, 31, and 33"

9

10 Page 12, line 8:

11 Delete "Sections 13 - 15, 24, and 25"

12 Insert "Sections 15 - 17, 28, and 29"

13

14 Page 12, line 11:

15 Delete "Section 19"

16 Insert "Section 21"

17

18 Page 12, line 14:

19 Delete "Section 5"

20 Insert "Section 7"

21

22 Page 12, line 16:

23 Delete "Sections 20 - 22 and 30"

24 Insert "Sections 22 - 24 and 34"

25

26 Page 12, line 20:

27 Delete "Section 26"

28 Insert "Section 30"

29

30 Page 12, line 21:

31 Delete "Sections 26 and 32"

1 Insert "Sections 30 and 36"

2

3 Page 12, line 22:

4 Delete "sec. 33"

5 Insert "sec. 37"

25-GH2038\K
Luckhaupt
4/2/08

CS FOR HOUSE BILL NO. 323(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to furnishing or delivering alcoholic beverages to persons under 21
2 years of age; relating to certain persons who lend money on secondhand articles;
3 relating to arson and criminally negligent burning; relating to defenses for the detention
4 of persons suspected of committing concealment of merchandise or theft; relating to
5 controlled substances; relating to the determination of time of a conviction; relating to
6 issuance of search warrants; relating to persons found incompetent to stand trial
7 concerning criminal conduct; relating to probation for certain offenses; relating to
8 restitution for fish and game violations; relating to aggravating factors at sentencing;
9 relating to post-conviction relief proceedings; relating to criminal extradition authority
10 of the governor; removing the statutory bar to prosecution of certain crimes; amending
11 Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants, and
12 Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

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

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

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

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

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

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

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

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

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

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

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

26 * **Sec. 4.** AS 08.76.020 is amended to read:

27 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and the
28 electronic record required by AS 08.76.010 shall appear in chronological order and,
29 when made in a book, in ink or indelible pencil. Blank lines may not be left between
30 entries. Obliterations, alterations, or erasures may not be made. Corrections shall be
31 made by drawing a line [IN INK] through the entry without destroying its legibility,

1 and, when made in a book, the line shall be drawn in ink. The book shall be open
2 to the inspection of a peace officer at reasonable times.

3 * Sec. 5. AS 11.46.230(a) is amended to read:

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

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

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

13 * Sec. 6. AS 11.46.295 is amended to read:

14 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
15 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
16 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
17 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
18 similar elements is a conviction of an offense having elements similar to those of an
19 offense defined as such under Alaska law at the time the offense was committed. The
20 court shall consider the date of a prior conviction as occurring on the date that
21 sentence is imposed for the prior offense.

22 * Sec. 7. AS 11.46.410(a) is amended to read:

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

26 * Sec. 8. AS 11.46 is amended by adding a new section to read:

27 **Sec. 11.46.427. Criminally negligent burning in the first degree.** (a) A
28 person commits the crime of criminally negligent burning in the first degree if the
29 person

30 (1) violates AS 11.46.430; and

31 (2) within the preceding 10 years, has been convicted of violating

1 AS 11.46.400 - 11.46.430 or AS 41.15.150 or a law or ordinance of this or another
2 jurisdiction with elements similar to those offenses.

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

4 * Sec. 9. AS 11.46.430 is amended to read:

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

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

10 * Sec. 10. AS 11.71.170(b) is amended by adding new paragraphs to read:

11 (30) carisprodol;

12 (31) zolpidem;

13 (32) zopiclone.

14 * Sec. 11. AS 12.35.010(a) is amended to read:

15 (a) A judicial officer may issue a search warrant upon a showing of probable
16 cause, supported by oath or affirmation, and particularly describing the place to be
17 searched and the thing to be seized. The court may issue a search warrant for a
18 place or property located either in the state or outside the state.

19 * Sec. 12. AS 12.35.015(a) is amended to read:

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

24 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT OR
25 TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
26 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
27 WARRANT; AND

28 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
29 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH AN
30 ONGOING INVESTIGATION].

31 * Sec. 13. AS 12.47.110(a) is amended to read:

1 (a) When the trial court determines by a preponderance of the evidence, in
2 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is
3 unable to understand the proceedings against the defendant or to assist in the
4 defendant's own defense, the court shall order the proceedings stayed, except as
5 provided in (d) of this section shall, [AND MAY] commit a [THE] defendant
6 charged with a felony and may commit a defendant charged with any other crime
7 to the custody of the commissioner of health and social services or the commissioner's
8 authorized representative for further evaluation and treatment until the defendant is
9 mentally competent to stand trial, or until the pending charges against the defendant
10 are disposed of according to law, but in no event longer than 90 days.

11 * Sec. 14. AS 12.47.110(b) is amended to read:

12 (b) On or before the expiration of the initial 90-day period of commitment, the
13 court shall conduct a hearing to determine whether or not the defendant remains
14 incompetent. If the court finds by a preponderance of the evidence that the defendant
15 remains incompetent, the court may recommit the defendant for a second period of 90
16 days. The court shall determine at the expiration of the second 90-day period whether
17 the defendant has become competent. If, at the expiration of the second 90-day period,
18 the court determines that the defendant continues to be incompetent to stand trial, the
19 charges against the defendant shall be dismissed without prejudice, and continued
20 commitment of the defendant shall be governed by the provisions relating to civil
21 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
22 crime involving force against a person and the court finds that the defendant presents a
23 substantial danger of physical injury to other persons and that there is a substantial
24 probability that the defendant will regain competency within a reasonable period of
25 time, in which case the court may extend the period of commitment for an additional
26 six months. If the defendant remains incompetent at the expiration of the additional
27 six-month period, the charges shall be dismissed without prejudice, and continued
28 [EITHER CIVIL] commitment proceedings shall be governed by the provisions
29 relating to civil commitment under AS 47.30.700 - 47.30.915 [INSTITUTED OR
30 THE COURT SHALL ORDER THE RELEASE OF THE DEFENDANT]. If the
31 defendant remains incompetent for five years after the charges have been dismissed

1 under this subsection, the defendant may not be charged again for an offense arising
2 out of the facts alleged in the original charges, except if the original charge is a class A
3 felony or unclassified felony.

4 * Sec. 15. AS 12.47.110 is amended by adding a new subsection to read:

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

10 * Sec. 16. AS 12.55.090(a) is amended to read:

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

17 * Sec. 17. AS 12.55.155(c)(8) is amended to read:

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

22 * Sec. 18. AS 12.55.155(f) is amended to read:

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

31 (2) other than one listed in (1) of this subsection, the factor shall be

1 presented to a trial jury under procedures set by the court, unless the defendant waives
2 trail by jury, stipulates to the existence of the factor, or consents to have the factor
3 proven under procedures set out in (1) of this subsection; a factor in aggravation
4 presented to a jury is established if proved beyond a reasonable doubt; written notice
5 of the intent to establish a factor in aggravation must be served on the defendant and
6 filed with the court

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

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

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

14 * Sec. 19. AS 12.70.280(2) is amended to read:

15 (2) "governor" includes

16 (A) a person performing the functions of governor by authority
17 of the law of this state; **and**

18 (B) the lieutenant governor or the head of a principal
19 department in the executive branch appointed by the governor to act on
20 behalf of the governor in performing extradition duties under this
21 chapter; the appointment shall be in writing and filed with the lieutenant
22 governor;

23 * Sec. 20. AS 12.72.020(a) is amended to read:

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

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

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

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

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

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

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

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

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

16 * Sec. 21. AS 12.72.020(b) is amended to read:

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

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

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

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

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

27 (A) was not known within

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

30 (ii) one year [TWO YEARS] after entry of a court
31 order revoking probation if the claim relates to a court's revocation of

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probation; or

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

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

(C) is not impeachment evidence; and

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

* Sec. 22. AS 12.72.020 is amended by adding a new subsection to read:

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

(1) the application is timely; and

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

* Sec. 23. AS 16.05.925(b) is amended to read:

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

1 (11) Wolf 500
 2 (12) Wolverine 500.

3 * Sec. 24. AS 47.30.780 is amended to read:

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

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

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

13 * Sec. 26. The uncodified law of the State of Alaska enacted in sec. 36(c), ch. 24, SLA
 14 2007, is amended to read:

15 (c) AS 12.72.025, enacted by sec. 25, ch. 24, SLA 2007 [OF THIS ACT],
 16 applies to offenses committed before, on, or after the effective date of sec. 25, ch. 24,
 17 SLA 2007 [OF THIS ACT]. A person whose application for post-conviction relief was
 18 denied before the effective date of sec. 25, ch. 24, SLA 2007 [OF THIS ACT] has
 19 until July 1, 2008, to file a claim described in AS 12.72.025. **This subsection does not**
 20 **authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal**
 21 **Procedure that is not otherwise available under AS 12.72, the Alaska Rules of**
 22 **Criminal Procedure, or other provision of law.**

23 * Sec. 27. AS 12.35.015(f) is repealed.

24 * Sec. 28. AS 11.71.310 and AS 12.20.010 are repealed.

25 * Sec. 29. The uncodified law of the State of Alaska is amended by adding a new section to
 26 read:

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

29 (b) **Execution and Return with Inventory.** The warrant shall be executed
 30 and returned within 30 [10] days after its date **of issuance.** However, upon sworn
 31 application made before the expiration of the initial 30 [10] day period or any

1 subsequent extension, the court may for good cause extend the execution period for a
2 reasonable time not to exceed 30 [10] days. Good cause includes protecting the
3 confidentiality of an ongoing investigation and protecting a person working with
4 law enforcement authorities on an investigation. The officer taking property under
5 the warrant

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

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

11 The return shall be made promptly and shall be accompanied by a
12 written inventory of any property taken as a result of the search pursuant to or in
13 conjunction with the warrant. The inventory shall be made in the presence of the
14 applicant for the warrant and the person from whose possession or premises the
15 property was taken, if they are present, or in the presence of at least one credible
16 person other than the applicant for the warrant or the person from whose possession or
17 premises the property was taken, and shall be signed by the officer under the penalty
18 of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a
19 notary public. The magistrate or judge or the court to which the return is made shall
20 upon request deliver a copy of the inventory to the person from whom or from whose
21 premises the property was taken and to the applicant for the warrant.

22 * Sec. 30. The uncoded law of the State of Alaska is amended by adding a new section to
23 read:

24 INDIRECT COURT RULE AMENDMENT. The provisions of AS 12.72.020(a) and
25 (b), as amended by secs. 20 and 21 of this Act, and the provisions of AS 12.72.020(d), as
26 added by sec. 22 of this Act, have the effect of amending Rule 35.1, Alaska Rule of Criminal
27 Procedure, by restricting the authority of a court to hear certain applications, claims, or
28 proceedings for post-conviction relief and by prescribing a procedure for a court to determine
29 if an application, claim, or proceeding may be considered.

30 * Sec. 31. The uncoded law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. (a) Sections 1, 2, 7, 10, 16 - 18, 23, and 28 of this Act apply to an
2 offense occurring on or after the effective date of this section.

3 (b) Section 6 of this Act applies to an offense occurring before, on, or after the
4 effective date of this section.

5 (c) Sections 11, 12, 27, and 29 of this Act apply to search warrants applied for on or
6 after the effective date of this section, regardless of whether the offense occurred before, on,
7 or after the effective date of this section.

8 (d) Sections 13 - 15, 24, and 25 of this Act apply to procedures occurring after the
9 effective date of this section, regardless of whether the offense occurred before, on, or after
10 the effective date of this section.

11 (e) Section 19 of this Act applies to applications for criminal extraditions submitted
12 on or after the effective date of this section, regardless of whether the offense occurred before,
13 on, or after the effective date of this section.

14 (f) Section 5 of this Act applies to offenses occurring and actions arising on or after
15 the effective date of this section.

16 (g) Sections 20 - 22 and 30 of this Act apply to applications submitted on or after the
17 effective date of this section.

18 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **RETROACTIVITY.** Section 26 of this Act is retroactive to July 1, 2007.

21 * **Sec. 33.** Sections 26 and 32 of this Act take effect immediately under AS 01.10.070(c).

22 * **Sec. 34.** Except as provided in sec. 33 of this Act, this Act takes effect July 1, 2008.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 323(JUD), Draft Version "E"

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

2 Insert "relating to arson and criminally negligent burning;"

3

4 Page 4, following line 10:

5 Insert new bill sections to read:

6 ** Sec. 7. AS 11.46.410(a) is amended to read:

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

10 * Sec. 8. AS 11.46 is amended by adding a new section to read:

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

14 (1) violates AS 11.46.430; and

15 (2) has been previously convicted of violating AS 11.46.400 -
16 11.46.430 or AS 41.15.150 or a law or ordinance of this or another jurisdiction with
17 elements similar to those offenses.

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

19 * Sec. 9. AS 11.46.430 is amended to read:

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

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

1 misdemeanor."

2

3 Renumber the following bill sections accordingly.

4

5 Page 6, following line 19:

6 Insert a new bill section to read:

7 "* **Sec. 17.** AS 12.55.127(c) is amended to read:

8 (c) If the defendant is being sentenced for

9 (1) escape, the term of imprisonment shall be consecutive to the term
10 for the underlying crime;

11 (2) two or more crimes under AS 11.41, a consecutive term of
12 imprisonment shall be imposed for at least

13 (A) the mandatory minimum term under AS 12.55.125(a) for
14 each additional crime that is murder in the first degree;

15 (B) the mandatory minimum term for each additional crime
16 that is an unclassified felony governed by AS 12.55.125(b);

17 (C) the presumptive term specified in AS 12.55.125(c) or the
18 active term of imprisonment, whichever is less, for each additional crime that
19 is

20 (i) manslaughter; or

21 (ii) kidnapping that is a class A felony;

22 (D) two years or the active term of imprisonment, whichever is
23 less, for each additional crime that is criminally negligent homicide;

24 (E) one-fourth of the presumptive term under AS 12.55.125(c)
25 or (i) for each additional crime that is sexual assault in the first degree under
26 AS 11.41.410 or sexual abuse of a minor in the first degree under
27 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those
28 offenses; and

29 (F) some additional term of imprisonment for each additional
30 crime, or each additional attempt or solicitation to commit the offense, under
31 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, [OR]

1 11.41.500 - 11.41.520, or AS 11.46.400 - 11.46.430."

2

3 Renumber the following bill sections accordingly.

4

5 Page 11, line 21:

6 Delete "secs. 17 and 18"

7 Insert "secs. 21 and 22"

8

9 Page 11, line 22:

10 Delete "sec. 19"

11 Insert "sec. 23"

12

13 Page 11, line 28:

14 Delete "Sections 3, 4, 7, 13 - 15, 20, and 24"

15 Insert "Sections 3, 4, 7 - 10, 16 - 18, 24, and 28"

16

17 Page 12, line 3:

18 Delete "Sections 8, 9, 23, and 25"

19 Insert "Sections 11, 12, 27, and 29"

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21 Page 12, line 6:

22 Delete "Sections 10 - 12, 21, and 22"

23 Insert "Sections 13 - 15, 25, and 26"

24

25 Page 12, line 9:

26 Delete "Section 16"

27 Insert "Section 19"

28

29 Page 12, line 14:

30 Delete "Sections 17 - 19 and 26"

31 Insert "Sections 21 - 23 and 30"

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

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Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: 2029

Number of pages including cover:

From: Jane Pierson

Date: March 30, 2008

Re: New Draft of C'SHB323(JUD) from version 25-GH2038\E

Might you please draft me a new working CS of the above-referenced bill, to include the following two changes:

1. Add Conceptual Amendment #1 (25-GH2038\E.2) with the following changes:

- A. Sec. 11.46.427(a)(2) Please add a ten year look-back period.
- B. P. 2, L. 7 - P. 3, L. 1 - Delete Sec. 17 re: consecutive sentencing.

2. Conceptual Amendment #2, from DOL.

3. Conceptual Amendment #3, from DOL.

Opps - here are the amendments.

Sorry -

Jane

DDL CONCERNS { - Look back
- consecutive Sent

25-GH2038\E.2
Luckhaupt
3/27 08

conceptual
AMENDMENT # 1

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG
TO: CSHB 323(JUD), Draft Version "E"

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

Insert "relating to arson and criminally negligent burning;"

Page 4, following line 10:

Insert new bill sections to read:

* Sec. 7. AS 11.46.410(a) is amended to read:

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

* Sec. 8. AS 11.46 is amended by adding a new section to read:

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

(1) violates AS 11.46.430; and

(2) has been previously convicted of violating AS 11.46.400 - 11.46.430 or AS 41.15.150 or a law or ordinance of this or another jurisdiction with elements similar to those offenses.

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

- look-back period

* Sec. 9. AS 11.46.430 is amended to read:

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

(b) Criminally negligent burning in the second degree is a class A

1 misdemeanor."

2

3 Renumber the following bill sections accordingly.

4

5 Page 6, following line 19:

6 Insert a new bill section to read:

7 **** Sec. 17.** AS 12.55.127(c) is amended to read:

8 (c) If the defendant is being sentenced for

9 (1) escape, the term of imprisonment shall be consecutive to the term
10 for the underlying crime;

11 (2) two or more crimes under AS 11.41, a consecutive term of
12 imprisonment shall be imposed for at least

13 (A) the mandatory minimum term under AS 12.55.125(a) for
14 each additional crime that is murder in the first degree;

15 (B) the mandatory minimum term for each additional crime
16 that is an unclassified felony governed by AS 12.55.125(b);

17 (C) the presumptive term specified in AS 12.55.125(c) or the
18 active term of imprisonment, whichever is less, for each additional crime that
19 is

20 (i) manslaughter; or

21 (ii) kidnapping that is a class A felony;

22 (D) two years or the active term of imprisonment, whichever is
23 less, for each additional crime that is criminally negligent homicide;

24 (E) one-fourth of the presumptive term under AS 12.55.125(c)
25 or (i) for each additional crime that is sexual assault in the first degree under
26 AS 11.41.410 or sexual abuse of a minor in the first degree under
27 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those
28 offenses; and

29 (F) some additional term of imprisonment for each additional
30 crime, or each additional attempt or solicitation to commit the offense, under
31 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, [OR]

1 11.41.500 - 11.41.520, or AS 11.46.400 - 11.46.430."

2

3 Renumber the following bill sections accordingly.

4

5 Page 11, line 21:

6 Delete "secs. 17 and 18"

7 Insert "secs. 21 and 22"

8

9 Page 11, line 22:

10 Delete "sec. 19"

11 Insert "sec. 23"

12

13 Page 11, line 28:

14 Delete "Sections 3, 4, 7, 13 - 15, 20, and 24"

15 Insert "Sections 3, 4, 7 - 10, 16 - 18, 24, and 28"

16

17 Page 12, line 3:

18 Delete "Sections 8, 9, 23, and 25"

19 Insert "Sections 11, 12, 27, and 29"

20

21 Page 12, line 6:

22 Delete "Sections 10 - 12, 21, and 22"

23 Insert "Sections 13 - 15, 25, and 26"

24

25 Page 12, line 9:

26 Delete "Section 16"

27 Insert "Section 19"

28

29 Page 12, line 14:

30 Delete "Sections 17 - 19 and 26"

31 Insert "Sections 21 - 23 and 30"

#2

Amendment to CSHB 323(JUD) - Work Draft 3 25 08

Page 9, lines 13 - 21: Delete all material and insert the following:

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

(1) the application is timely; and

(2) except for an application described in AS 12.72.025 or allowed under

(c) of this section, no previous application has been filed.

AMENDMENT #3

OFFERED IN THE HOUSE

TO: HB 323

Page 8, following line 9:

Insert a new bill section to read:

* **Sec. 22.** The uncodified laws of the State of Alaska as enacted in Chapter 24, Section 36(c), SLA 2007 is amended to read:

(c) AS 12.72.025, enacted by sec. 25 of this Act, applies to offenses committed before, on, or after the effective date of sec. 25 of this Act. A person whose application for post-conviction relief was denied before the effective date of sec. 25 of this act has until July 1, 2008, to file a claim described in AS 12.72.025. **This subsection does not authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal Procedure that is not otherwise available under AS 12.72, the Alaska Rules of Criminal Procedure, or other provisions of law.**

Renumber the following bill sections accordingly.

Page 9, following line 7:

Insert a new bill section to read:

***Sec. 23.** Section 22 of this Act is retroactive to July 1, 2007.

Renumber the following bill sections accordingly.

25-GH2038VE
Luckhaupt
3/25/08

CS FOR HOUSE BILL NO. 323(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain persons who lend money on secondhand articles; relating to
2 penalizing certain recidivist offenders as felons; relating to defenses for the detention
3 of persons suspected of committing concealment of merchandise or theft; relating to
4 controlled substances; relating to the determination of time of a conviction; relating to
5 issuance of search warrants; relating to persons found incompetent to stand trial
6 concerning criminal conduct; relating to probation for certain offenses; relating to
7 restitution for fish and game violations; relating to aggravating factors at sentencing;
8 relating to post-conviction relief proceedings; relating to criminal extradition authority
9 of the governor; removing the statutory bar to prosecution of certain crimes;
10 amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of
11 warrants; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for
12 an effective date."

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

2 * Section 1. AS 08.76.010 is amended by adding a new subsection to read:

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

9 * Sec. 2. AS 08.76.020 is amended to read:

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

17 * Sec. 3. AS 11.41.220(a) is amended to read:

18 (a) A person commits the crime of assault in the third degree if that person

19 (1) recklessly

20 (A) places another person in fear of imminent serious
21 physical injury by means of a dangerous instrument;

22 (B) causes physical injury to another person by means of a
23 dangerous instrument; or

24 (C) while being 16 years of age or older

25 (i) causes physical injury to a child under 10 years of
26 age and the injury would cause a reasonable caregiver to seek medical
27 attention from a health care professional in the form of diagnosis or
28 treatment;

29 (ii) causes physical injury to a child under 10 years of
30 age on more than one occasion;

31 (2) with intent to place another person in fear of death or serious

1 physical injury to the person or the person's family member makes repeated threats to
2 cause death or serious physical injury to another person;

3 (3) while being 18 years of age or older, knowingly causes physical
4 injury to a child under 16 years of age but at least 10 years of age and the injury
5 reasonably requires medical treatment; [OR]

6 (4) with criminal negligence causes serious physical injury unde:
7 AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument; or

8 (5) violates AS 11.41.230(a)(1) or (2) and, within the preceding 10
9 years, the person was convicted on two or more separate occasions of a crime in
10 violation of

11 (A) AS 11.41.100 - 11.41.170;

12 (B) AS 11.41.200 - 11.41.220;

13 (C) AS 11.41.230(a)(1) or (2);

14 (D) AS 11.41.280 - 11.41.282;

15 (E) AS 11.41.260 - 11.41.270;

16 (F) AS 11.41.410, 11.41.420, 11.41.436, or 11.41.438;

17 (G) a law in another jurisdiction that is similar to those

18 described in (A) - (F) of this paragraph.

19 * Sec. 4. AS 11.41.220 is amended by adding a new subsection to read:

20 (e) In (a)(5) of this section, the court shall consider the date of a previous
21 conviction as occurring on the date that sentence is imposed for the previous offense.

22 * Sec. 5. AS 11.46.230(a) is amended to read:

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

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

30 (2) the peace officer, owner, or owner's agent had probable cause to
31 believe that the person detained was committing or attempting to commit

1 concealment of merchandise or theft from the commercial establishment.

2 * Sec. 6. AS 11.46.295 is amended to read:

3 Sec. 11.46.295. **Prior convictions.** For purposes of considering prior
4 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
5 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
6 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
7 similar elements is a conviction of an offense having elements similar to those of an
8 offense defined as such under Alaska law at the time the offense was committed.

9 The court shall consider the date of a prior conviction as occurring on the date
10 that sentence is imposed for the prior offense.

11 * Sec. 7. AS 11.71.170(b) is amended by adding new paragraphs to read:

12 (30) carisprodol;

13 (31) zolpidem;

14 (32) zopiclone.

15 * Sec. 8. AS 12.35.010(a) is amended to read:

16 (a) A judicial officer may issue a search warrant upon a showing of probable
17 cause, supported by oath or affirmation, and particularly describing the place to be
18 searched and the thing to be seized. The court may issue a search warrant for a
19 place or property located either in the state or outside the state.

20 * Sec. 9. AS 12.35.015(a) is amended to read:

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

25 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT
26 OR TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
27 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
28 WARRANT; AND

29 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
30 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH
31 AN ONGOING INVESTIGATION].

1 * Sec. 10. AS 12.47.110(a) is amended to read:

2 (a) When the trial court determines by a preponderance of the evidence, in
3 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant
4 is unable to understand the proceedings against the defendant or to assist in the
5 defendant's own defense, the court shall order the proceedings stayed, except as
6 provided in (d) of this section shall, [AND MAY] commit a [THE] defendant
7 charged with a felony and may commit a defendant charged with any other
8 crime to the custody of the commissioner of health and social services or the
9 commissioner's authorized representative for further evaluation and treatment until
10 the defendant is mentally competent to stand trial, or until the pending charges
11 against the defendant are disposed of according to law, but in no event longer than
12 90 days.

13 * Sec. 11. AS 12.47.110(b) is amended to read:

14 (b) On or before the expiration of the initial 90-day period of commitment,
15 the court shall conduct a hearing to determine whether or not the defendant remains
16 incompetent. If the court finds by a preponderance of the evidence that the defendant
17 remains incompetent, the court may recommit the defendant for a second period of
18 90 days. The court shall determine at the expiration of the second 90-day period
19 whether the defendant has become competent. If, at the expiration of the second 90-
20 day period, the court determines that the defendant continues to be incompetent to
21 stand trial, the charges against the defendant shall be dismissed without prejudice,
22 and continued commitment of the defendant shall be governed by the provisions
23 relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
24 is charged with a crime involving force against a person and the court finds that the
25 defendant presents a substantial danger of physical injury to other persons and that
26 there is a substantial probability that the defendant will regain competency within a
27 reasonable period of time, in which case the court may extend the period of
28 commitment for an additional six months. If the defendant remains incompetent at
29 the expiration of the additional six-month period, the charges shall be dismissed
30 without prejudice, and continued [EITHER CIVIL] commitment proceedings shall
31 be governed by the provisions relating to civil commitment under AS 47.30.700 -

1 47.30.915 [INSTITUTED OR THE COURT SHALL ORDER THE RELEASE OF
2 THE DEFENDANT]. If the defendant remains incompetent for five years after the
3 charges have been dismissed under this subsection, the defendant may not be
4 charged again for an offense arising out of the facts alleged in the original charges,
5 except if the original charge is a class A felony or unclassified felony.

6 * Sec. 12. AS 12.47.110 is amended by adding a new subsection to read:

7 (e) A defendant charged with a felony and found to be incompetent to
8 proceed under this section is rebuttably presumed to be mentally ill and to present a
9 likelihood of serious harm to self or others in proceedings under AS 47.30.700 -
10 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the
11 court may consider as recent behavior the conduct with which the defendant was
12 originally charged.

13 * Sec. 13. AS 12.55.090(a) is amended to read:

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

20 * Sec. 14. AS 12.55.155(c)(8) is amended to read:

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

25 * Sec. 15. AS 12.55.155(f) is amended to read:

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

27 (1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of
28 this section, or if the defendant seeks to establish a factor in mitigation at sentencing,
29 written notice must be served on the opposing party and filed with the court not later
30 than 10 days before the date set for imposition of sentence; the factors in aggravation
31 listed in this paragraph and factors in mitigation must be established by clear and

1 convincing evidence before the court sitting without a jury; all findings must be set
2 out with specificity;

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

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

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

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

17 * Sec. 16. AS 12.70.280(2) is amended to read:

18 (2) "governor" includes

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

21 (B) the lieutenant governor or the head of a principal
22 department in the executive branch appointed by the governor to act on
23 behalf of the governor in performing extradition duties under this
24 chapter; the appointment shall be in writing and filed with the lieutenant
25 governor;

26 * Sec. 17. AS 12.72.020(a) is amended to read:

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

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

31 (2) the claim was, or could have been but was not, raised in a direct

1 appeal from the proceeding that resulted in the conviction;

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

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

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

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

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

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

19 * Sec. 18. AS 12.72.020(b) is amended to read:

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

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

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

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

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

30 (A) was not known within

31 (i) one year [TWO YEARS] after entry of the

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judgment of conviction if the claim relates to a conviction;

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

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

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

(C) is not impeachment evidence; and

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

* Sec. 19. AS 12.72.020 is amended by adding a new subsection to read:

(d) The court may not consider substantive claims in an application brought under AS 12.72.010 or the Alaska Rules of Criminal Procedure until the court has first determined that the application is timely and that no previous application has been filed. If the court is unable to determine this based on the initial application or the state's response, the court may, if required by law, appoint counsel for the applicant to evaluate and, if necessary, litigate whether the application is untimely or successive. If the court finds that the application is neither untimely or successive, the court may, if required by law, appoint counsel to represent the applicant for the substantive claims raised by the application.

* Sec. 20. AS 16.05.925(b) is amended to read:

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

1 (5) Deer 400
 2 (6) Elk 800
 3 (7) Goat 800
 4 (8) Moose 1,000
 5 (9) Musk oxen 3,000
 6 (10) Sheep 1,100
 7 (11) Wolf 500
 8 (12) Wolverine 500.

9 * Sec. 21. AS 47.30.780 is amended to read:

10 **Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,**

11 **the** [THE] professional person in charge shall at any time discharge a respondent on
 12 the ground that the respondent is no longer gravely disabled or likely to cause serious
 13 harm as a result of mental illness. A certificate to this effect shall be sent to the court,
 14 which shall enter an order officially terminating the involuntary commitment.

15 * Sec. 22. AS 47.30.780 is amended to add a new subsection to read:

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

19 * Sec. 23. AS 12.35.015(f) is repealed.

20 * Sec. 24. AS 11.71.310 and AS 12.20.010 are repealed.

21 * Sec. 25. The uncodified law of the State of Alaska is amended by adding a new section
 22 to read:

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

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

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under the warrant

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

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

The return shall be made promptly and shall be accompanied by a written inventory of any property taken as a result of the search pursuant to or in conjunction with the warrant. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a notary public. The magistrate or judge or the court to which the return is made shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

* Sec. 26. The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. The provisions of AS 12.72.020(a) and (b), as amended by secs. 17 and 18 of this Act, and the provisions of AS 12.72.020(d), as added by sec. 19 of this Act, have the effect of amending Rule 35.1, Alaska Rule of Criminal Procedure, by restricting the authority of a court to hear certain applications, claims, or proceedings for postconviction relief and by prescribing a procedure for a court to determine if an application, claim, or proceeding may be considered.

* Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 3, 4, 7, 13 - 15, 20, and 24 of this Act apply to an offense occurring on or after the effective date of this Act. References to previous convictions under sec. 3 of this Act apply to convictions occurring on or after the effective date of this Act.

1 (b) Section 6 of this Act applies to an offense occurring before, on, or after
2 the effective date of this Act.

3 (c) Sections 8, 9, 23, and 25 of this Act apply to search warrants applied for
4 on or after the effective date of this Act, regardless of whether the offense occurred
5 before, on, or after the effective date of this Act.

6 (d) Sections 10 - 12, 21, and 22 of this Act apply to procedures occurring
7 after the effective date of this Act, regardless of whether the offense occurred before,
8 on, or after the effective date of this Act.

9 (e) Section 16 of this Act applies to applications for criminal extraditions
10 submitted on or after the effective date of this Act, regardless of whether the offense
11 occurred before, on, or after the effective date of this Act.

12 (f) Section 5 of this Act applies to offenses occurring and actions arising on
13 or after the effective date of this Act.

14 (g) Sections 17 - 19 and 26 of this Act apply to applications submitted on or
15 after the effective date of this Act.

16 * **Sec. 28.** This Act takes effect July 1, 2008.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 323
 (H) Publish Date: 1/17/08
 Dept. Affected: Health & Social Services
 RDU: Behavioral Health
 Component: Alaska Psychiatric Institute

ID(File name) 0038-DHSS-BH-1-15-08

Title CRIMES OF ASSAULT IN THE FOURTH DEGREE

Sponsor _____
 Requester GOVERNOR

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)

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

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 competent 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.

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 01/11/2008
 Date 01/15/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 323
 (H) Publish Date: 1/17/08

Identifier (file name): 0038-DPS-DET-01-11-08 Public Safety
 Title "An Act relating to crimes of assault in the fourth degree..." RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Rules Committee
 Requester Governor Component Number 2325

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								
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								
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CHANGE IN REVENUES ()								
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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							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	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 increases the severity of subsequent Assault IV convictions, adds a new element to the crime of Resisting or Interfering with Arrest, adds two new substances to the schedule IVA list of prohibited substances and clarifies in statute that a third conviction for theft within five years increases the severity of the crime one level. This bill also addresses problems concerning the release of persons found to be incompetent to stand trial and repeals statutes to allow for the state to prosecute for an act that another jurisdiction has already prosecuted. Finally, this bill allows the court to issue search warrants telephonically and provides for a later return of search warrant inventory.

Passage of this legislation would cause a slight increase in the number of arrests made and cases referred for prosecution. This increase can be assumed by the DPS and will have no fiscal impact on the department.

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

Phone 907-269-5591
 Date/Time 1/11/08 10:15 AM
 Date 1/11/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB323CS(JUD)-DOC-PM-04-07-08
() Publish Date: _____

Identifier (file name): 0038-DOC-IDO-01-15-08 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	*	*	*	*	*	*	*	*
Travel	*	*	*	*	*	*	*	*
Contractual	*	*	*	*	*	*	*	*
Supplies	*	*	*	*	*	*	*	*
Equipment	*	*	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*	*	*

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

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

Estimate of any current year (FY2008) cost: _____

POSITIONS

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

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 Peeples, Deputy Commissioner
Department of Corrections

Phone: (907) 465-3339
Date/Time: 4/7/08 11:05 AM
Date: 4/7/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. HB323CS(JUD)-DOC-PM-04-C.-08

ANALYSIS CONTINUATION

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

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: HB 323
(H) Publish Date: 1/17/08

Identifier (file name): 0038-LAW-CRIM-01-09-08 Dept. Affected: LAW
Title: An Act relating to the crimes of assault in the fourth degree RDU: CRIMINAL
and of resisting or interfering with arrest; Component: Criminal Appeals/Special Litigation
Sponsor: Rules Committee
Requester: Governor 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	132.2	0.0	132.2	132.2	132.2	132.2	132.2	132.2
Travel	2.2	0.0	2.2	2.2	2.2	2.2	2.2	2.2
Contractual	2.0	0.0	1.0	1.0	1.0	1.0	1.0	1.0
Supplies								
Equipment	6.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	142.9	0.0	135.4	135.4	135.4	135.4	135.4	135.4

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	142.9	0.0	135.4	135.4	135.4	135.4	135.4	135.4
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	142.9	0.0	135.4	135.4	135.4	135.4	135.4	135.4

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	1	-	1	1	1	1	1
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This omnibus legislation makes several changes in the criminal law which will increase prosecutions

The bill will create a class C felony for persons convicted of assault in the fourth degree (a class A misdemeanor), if the person has two convictions in the previous 10 years of serious crimes against a person. This goal of protecting society from persons who habitually assault others will have a statewide impact on the prosecution of fourth-degree assault.

The expansion in the court's jurisdiction to issue search warrants outside the state is designed to increase the number of cross-boarder crimes that can be prosecuted. It is anticipated that this will be especially true in computer-aided crimes and child pornography. The new attorney would receive specialized training in computer-aided offenses. **-continued-**

Prepared by: Betty Martin, Administrative Services Division
Division: Administrative Services
Approved by: Talis Colberg, Attorney General
Department of Law

Phone: (907) 465-3673
Date/Time: 1/9/08 4:00 PM
Date: 1/9/2008

FISCAL NOTE #6

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. HB 323 _____

ANALYSIS CONTINUATION

More sophisticated crimes in both conduct and offenders (white-collar to gang members) are being referred to the Criminal Division. The elimination of the restriction barring state prosecution of some offenses will increase the number of cases, especially these types of offenses. These are the most difficult crimes to identify and prosecute. They are generally complex. In order to deal with these matters, the Department will need a new Attorney V who will receive specialized training and skills in complex litigation, "following the money" accounting, computer forensics, and in crimes found outside the general criminal code.

The fiscal note also includes first year costs for office furniture and equipment.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 7
 Bill Version: CSHB 323(JUD)
 (H) Publish Date: 4/7/08

Identifier (file name): HB323CS(JUD)-DOA-OPA-4-3-08 Dept. Affected: Administration
 Title: "An Act relating to furnishing or delivering alcoholic beverages to persons under 21 years of age . . ." RDU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor: Rules Committee Component Number: 43
 Requester: Governor

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								
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 ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This version of HB 323 does not include the provisions for converting misdemeanor assault in the fourth degree charges into Class C felonies, and therefore, the anticipated impact on OPA is reduced significantly.

Provisions in the current bill include: modifications to the criminal negligent burning law to create a crime of felony negligent burning, additions to the list of scheduled substances, and modifications to the procedures courts and law enforcement may use in relation to search warrants. The bill includes a provision clarifying the court's role in reviewing applications for post-conviction relief and requires that a court not look at the substantive claims of the applicant until the court has determined that the application is timely and that the application is not precluded by

Prepared by: Rachol Levitt, Acting Director
 Division: Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone: 907 269-3504
 Date/Time: 4/3/08, 10 00 a m
 Date: 4/3/2008

FISCAL NOTE #7

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSHB 323(JUD)

ANALYSIS CONTINUATION

the filing of previous applications. The bill also reduces the amount of time that applicants have to file claims for post-conviction relief from two years after the date of entry of judgment to one year.

Overall the bill is expected to have a de minimus impact on the agency, and therefore, OPA submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 8
 Bill Version: CSHB 323(JUD)
 (H) Publish Date: 4/7/08

Identifier (file name): HB323CS(JUD)-DOA-PDA-4-4-08 Dept. Affected: Administration
 Title: "An Act relating to furnishing or delivering alcoholic beverages to persons under 21 years of age . . ." RDU: Legal and Advocacy Services
 Component: Public Defender Agency
 Sponsor: Rules Committee Component Number: 43
 Requester: Governor

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								
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 ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This version of HB 323 does not include the provisions for converting misdemeanor assault in the fourth degree charges into Class C felonies, and therefore, the anticipated impact on the Public Defender Agency is reduced significantly.

Provisions in the current bill include modifications to the criminal negligent burning law to create a crime of felony negligent burning, additions to the list of scheduled substances, and modifications to the procedures courts and law enforcement may use in relation to search warrants. The bill includes a provision clarifying the court's role in reviewing applications for post-conviction relief and requires that a court not look at the substantive claims of the applicant until the court has determined that the application is timely and that the application is not precluded by

Prepared by: Quinlan Steiner, Director
 Division: Public Defender Agency
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone: 907 334-4414
 Date/Time: 4/4/08, 8:00 a.m.
 Date: 4/4/2008

FISCAL NOTE #8

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSHB 323(JUD)

ANALYSIS CONTINUATION

the filing of previous applications. The bill also reduces the amount of time that applicants have to file claims for post-conviction relief from two years after the date of entry of judgment to one year.

Overall the bill is expected to have a de minimus impact on the agency, and therefore, the Public Defender Agency submits a zero fiscal note.

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	0000	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	0000	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
040000183	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
050000000	3117	FRH0	10/20/2005	ROUTINE COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY 101 SANTA CLAUSE LANE	10/19/2005	2142	9419
050001258	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	1400	9983
040000731	3381	RLF2	7/27/2004		UJBA	FOOD FACTORY	7/27/2004	1315	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
040011382	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

049001289	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#	LtrLic#	PermiD	OpenDt	Comments	Beat	Location	OccurDt	OccurTm	Vol
050000790	858	RLF2	38625		HJBF	PIKES LANDING	38588	1325	9983
050000879	858	FRH0	38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA	PIKES LANDING 4438 AIRPORT ROAD	38644	0005	9419
050000879	858	FRH0	38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA		38644	0005	9423
050000879	858	FRH0	38644	BARTENDER SOLD ALCOHOL TO A PERSON UNDER THE AGE OF 21 DURING A COMPLIANCE CHECK	UJBA		38644	0005	9931
060000076	858	RLF2	38740		UJBA		38644	0005	9878
060000375	858	RLF2	38769		HJBF	PIKES LANDING	38740	1400	9983
060000654	858	JRB9	38821	REPORT ISSUED	HJBF	PIKES LANDING	38769	1430	9983
060000756	858	RLF2	38832	REPORT ISSUED	UJBA	PIKES LANDING 4438 AIRPORT ROAD	38769	1430	9983
060000946	858	RLF2	38867	REPORT ISSUED	HJBF	PIKES LANDING	38832	1340	9983
060001091	858	FRH0	38887	COMPLIANCE CHECK PASSED	HJBF	PIKES LANDING	38867	1115	9983
060001408	858	RLF2	38925	REPORT ISSUED	UJBA	PIKE'S LANDING 4438 AIRPORT ROAD	38884	2200	9419
060001911	858	RLF2	38987	REPORT ISSUED	HJBF	PIKES LANDING	38925	1230	9983
060001923	858	RLF2	38988	CATERERS PERMIT TURNED IN TO JAST NOT PROPER LAW ENFORCEMENT AGENCY LOST PERMIT REISSUED TO JAY RAMOS FOR EVENT AT PIONEER PARK W/PIKES CATERING PERMIT	HJBF	PIKE'S LANDING	38987	1100	9983
060002448	858	RLF2	39050	REPORT ISSUED	UJBA	PIKES LANDING	38975	0000	9422
060002584	858	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	HJBF	PIKES LANDING	39050	1145	9983
060002584	858	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA	PIKE'S LANDING LOUNGE 4438 AIRPORT ROAD	39069	1440	9419
060002584	858	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		39069	1440	9422
060002584	858	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		39069	1440	9931
060002620	858	RLF2	39077	FAILED COMPLIANCE CHECK FRH0 CASE 06-2584	UJBA		39069	1440	9678
060002649	858	RLF2	39080	REPORT ISSUED	HJBF	PIKE'S LANDING	39069	0000	9605
070000090	858	RLF2	39106	REPORT ISSUED	HJBF	PIKE'S LANDING	39079	1115	9983
070001692	858	RLF2	39324	REPORT ISSUED	HJBF	PIKES LANDING	39106	1330	9983
070002173	858	RLF2	39443	REPORT ISSUED	HJBF	PIKES WATERFRONT	39324	1500	9484
080000087	858	RLF2	39477	REPORT ISSUED	HJBF	PIKES WATERFRONT LODGE	39443	1300	9983
050000900	3117	FRH0	38645	ROUTINE COMPLIANCE CHECK PASSED	HJBF	PIKES LANDING	39477	0000	9983
050001268	3117	RLF2	38715		UJBA	FOOD FACTORY 101 SANTA CLAUSE LANE	38644	2142	9419
060000394	3117	RLF2	38773		HJBU	FOOD FACTORY	38715	1200	9983
060001054	3117	RLF2	38881	REPORT ISSUED	HJBU	FOOD FACTORY	38773	1220	9983
060001718	3117	RLF2	38957	REPORT ISSUED	HJBU	FOOD FACTORY	38881	1115	9983
060002154	3117	RLF2	39015	REPORT ISSUED	HJBU	FOOD FACTORY	38957	1400	9983
060002459	3117	RLF2	39050	REPORT ISSUED	HJBU	FOOD FACTORY	39015	1200	9983
070000635	3117	RLF2	39109	REPORT ISSUED	HJBU	FOOD FACTORY	39050	1430	9983
070001376	3117	RLF2	39244	REPORT ISSUED	HJBU	FOOD FACTORY	39109	1300	9983
070001534	3117	RLF2	39288	REPORT ISSUED	HJBU	FOOD FACTORY	39244	1515	9982
070001791	3117	RLF2	39344	REPORT ISSUED	HJBU	FOOD FACTORY	39288	1300	9983
050000844	3381	RLF2	38636		HJBU	FOOD FACTORY	39344	1230	9983
050001208	3381	FRH0	38706	COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY	38636	1345	9983
060000647	3381	JRB9	38821	REPORT ISSUED	UJBA	FOOD FACTORY 44 COLLEGE ROAD	38702	1930	9419
060000742	3381	RLF2	38831	REPORT ISSUED	UJBA	FOOD FACTORY 44 COLLEGE	38775	1438	9983
060002580	3381	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA	FOOD FACTORY	38811	1345	9983
060002580	3381	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA	FOOD FACTORY 44 COLLEGE ROAD	39069	1149	9419
060002580	3381	FRH0	39069	WAITRESS FURNISHED TO UNDER AGE PERSON SUMMONS ISSUED	UJBA		39069	1149	9423
060002621	3381	RLF2	39077	FAILED COMPLIANCE CHECK FRH0 CASE 06-2580	UJBA		39069	1149	9931
070000357	3381	RLF2	39137	REPORT ISSUED	UJBA	FOOD FACTORY	39069	0000	9605
070000974	3381	RLF2	39197	ASSIST FRH0 WITH COMPLIANCE CHECK 07-922	UJBA	FOOD FACTORY	39137	1515	9983
070000922	3381	FRH0	39199	COMPLIANCE CHECK PASSED	UJBA	44 COLLEGE ROAD FOOD FACTORY	39197	1800	9605
070001517	3381	RLF2	39286	REPORT ISSUED	HJBF	THE FOOD FACTORY 44 COLLEGE ROAD	39197	1800	9419
070001672	3381	RLF2	39321	REPORT ISSUED	UJBA	FOOD FACTORY	39286	1515	9983
070001939	3381	RLF2	39385	REPORT ISSUED	UJBA	FOOD FACTORY	39321	1400	9983
070002000	3381	FRH0	39426	COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY 44 COLLEGE ROAD	39385	1430	9983
080000000	3381	FRH0	39452	COMPLIANCE CHECK PASSED	UJBA	FOOD FACTORY 44 COLLEGE ROAD	39426	2144	9419
050001255	4045	RLF2	38713		HJBF	MIDNIGHT SUN BAR & GRILL	39452	1422	9419

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 trail 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 statue 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 appoin:ments 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 trail judger 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 no,t the state should be objecting to the aitorney 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?

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 the 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.

Jane Pierson

From: Fink, Joshua P (DOA) [joshua.fink@alaska.gov]
Sent: Wednesday, March 26, 2008 5:29 PM
To: Jane Pierson; Linda Hay; Carpeneti, R Anne D (LAW); Steiner, Quinlan G (DOA)
Subject: Section 19 - HB 323
Attachments: Holden.PDF; Grinols.PDF

I sent the Holden decision in a format that is possibly difficult to open. I am sending it again as a PDF, along with the decision in Grinols.

As I earlier stated, Holden holds that a defendant has a constitutional right to the appointment of counsel on a first PCR on the issue of timeliness, even if the PCR on its face is untimely. The supreme court has been petitioned to review this court of appeals decision.

Grinols holds that in spite of the statutory prohibition, a petitioner is entitled to challenge the effectiveness of his PCR counsel in a second, or successive, PCR.

To the extent section 19 contravenes these decisions, and I believe the section does, it is unconstitutional.

You should also be aware that in a current appeal before the court of appeals, defendant Baker and OSPA will be arguing what a successive PCR is. OPA and the PD have been asked to file amicus briefs.

I am going to re-read these opinions, and would like to discuss with Annie, but I believe my testimony Friday will be that section 19 as written is unconstitutional.

Thanks, Josh.

Joshua P. Fink
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Office of Public Advocacy
Department of Administration
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Westlaw.

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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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197k841 k. In General. Most Cited Cases

Supreme Court would, on cross-petitions for hearing on appeal from dismissal of habeas petition, review only those issues accepted by it on cross-petitions, and declined to review issues and arguments raised by petitioner which were irrelevant to those issues. Rules App.Proc., Rule 305(a)(1).

[3] Constitutional Law 92 ⇌ 4836

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)12 Other Particular Issues and Applications

92k4836 k. Post-Conviction Relief. Most Cited Cases

(Formerly 92k270.5)

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. Const. Art. 1, § 7.

[4] Constitutional Law 92 ⇌ 4836

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)12 Other Particular Issues and Applications

92k4836 k. Post-Conviction Relief. Most Cited Cases

(Formerly 92k270.5)

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

State constitution's due process clause required that counsel in first application for post-conviction relief be effective, despite appreciable burden on state entailed by requirement that second post-conviction relief petitions be addressed to determine if counsel on a first petition had been inadequate, and by increased potential for frivolous petitions; burden on state was insufficient to overcome a defendant's right to effective representation and risk that that right would be violated if defendant were unable to challenge attorney's effectiveness, and entitlement to counsel not required to be competent would be absurd. Const. Art. 1, § 7; AS 12.72.020(a)(6).

[5] Constitutional Law 92 ⇌ 4836

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)12 Other Particular Issues and Applications

92k4836 k. Post-Conviction Relief. Most Cited Cases

(Formerly 92k270.5)

For purposes of state constitutional due process analysis, the private interest affected in a case in which a defendant seeks to bring an ineffective counsel claim

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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(c).

[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.

Nancy 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 CARPENETI, Justices.

OPINION

CARPENETI, 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 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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of relief under AS 12.72.020(a)(6) and remanded for further proceedings in the trial court. *Id.* at 619-20.

FN3. Accordingly, the court of appeals reversed the superior court and remanded for further proceedings. *Id.*

The court of appeals upheld the constitutionality of Civil Rule 86(m), which states that post-conviction relief supersedes habeas corpus as the method for collateral attack, and it upheld AS 12.72.020(a)(6), which limits a defendant to one application for post-conviction relief. The court further held that, under the due process clause of the Alaska Constitution, defendants must be allowed to pursue a second petition for post-conviction relief if they allege that they received ineffective assistance of counsel in litigating their first application.

The court reasoned that, as defendants have a right to competent legal representation when they litigate a first application for post-conviction relief, they must be allowed to attack the result of that first application by showing that they received incompetent representation.

In order to challenge the effectiveness of counsel, the court of appeals held that the defendant must do more than show that his or her post-conviction relief attorney failed to raise or competently argue a colorable claim. The defendant must also prove (1) that the defendant was diligent in raising

the ineffectiveness claim, (2) that the prior post-conviction relief attorney was incompetent, (3) that the underlying claim was meritorious, and (4) that there is a reasonable possibility that the outcome of the defendant's original trial court proceedings would have been different but for counsel's incompetence.^{FN4}

FN4. *Id.*

The court of appeals, though, held that indigent defendants are not entitled to counsel at public expense when litigating a second application for post-conviction relief. Rather, the court stated, the superior court has authority, under the due process clause, to appoint counsel for an indigent defendant where the court finds that a lawyer's assistance is needed for a fair and meaningful litigation of the defendant's claim.^{FN5}

FN5. *Id.*

Grinols filed a petition for hearing, alleging several errors. The state cross-petitioned, arguing that the court of appeals erred in holding that under the due process clause of the Alaska Constitution a defendant may bring a second application for post-conviction relief if the defendant alleges ineffective assistance of counsel in litigating the first application. We granted the state's cross-petition and one part of Grinols's petition. We directed the parties to file briefs addressing two issues:

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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}

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

FN14. *Id.* at 255.

FN15. *Id.*

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

FN17. *Id.*

FN18. *Id.*

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}

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), *superceded 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 *Jovieno 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).

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FN45. 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987).

FN46. 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991).

The reach of the federal due process clause in post-conviction relief litigation is irrelevant to this case. We decide this case under the Alaska Constitution, not the federal Constitution.^{FN47}

FN47. Because there is no federal right to counsel in post-conviction relief proceedings, *Pennsylvania v. Finley*, 481 U.S. 551, 555-56, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987), there is no federal challenge to the effectiveness of that counsel. *Coleman v. Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). But because the federal Constitution does not govern state due process analysis of the right to challenge the effectiveness of counsel appointed by the state in post-conviction relief litigation, it is irrelevant to our resolution of this case on state constitutional grounds.

***896 B. The Petition for Review of the Question Whether Due Process Requires the Appointment of Counsel To Assist in Prosecuting an Ineffective Assistance of Counsel Claim Was Improvidently Granted.**

The court of appeals decided that the question of appointing counsel to assist Grinols in presenting his second post-conviction relief claim-(that his counsel on his first post-conviction claim was ineffective)-should be left to the superior court to decide. Upon further consideration, we conclude that we improvidently granted review of this question.^{FN48} Accordingly, we decline to consider it further here.

FN48. We note that both the state and the Public Defender Agency agree in their briefing to this court that the court of appeals's resolution of this issue was correct.

V. CONCLUSION

[7] 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. We therefore AFFIRM the decision of the court of appeals on that issue and decline to address the appointment of counsel for indigent defendants in such proceedings.

Alaska,2003.
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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. FNI

FNI. *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 ***817** 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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holding in *Nichols* was codified in former Criminal Rule 35(f) (enacted by Supreme Court Order No. 98, page 12):

Indigent Applicant. If the applicant [for post-conviction relief] is indigent, [and] the court determines that the application shall not be summarily disposed of on the pleadings and [the existing] record ..., but that the issues raised by the application require an evidentiary hearing, counsel shall be appointed to assist [the] indigent applicant[.]

Thus, after the decision in *Nichols* and the enactment of Criminal Rule 35(f), Alaska law clearly provided that an indigent petitioner for post-conviction relief was entitled to the assistance of counsel at public expense-but only after the trial court concluded that the petition presented a prima facie case for relief.

In *Donnelly*, the supreme court acknowledged that Criminal Rule 35(f) did not go far enough-that this rule was unlawful to the extent that it conditioned a defendant's right to counsel on the trial court's preliminary determination that the defendant's petition raised issues of arguable merit.

The supreme court explained that, because a petition for post-conviction relief can be dismissed on the pleadings, or on a motion for summary judgement, petitioners need the assistance of counsel when formulating and investigating their claims for relief:

It may be necessary, in order to develop genuine issues, for the prisoner making [an] application [for post-conviction relief] to prepare supplemental pleadings and to participate in the discovery procedures permitted under the rule. It is therefore essential that [the prisoner] be represented by competent counsel in the event that he is unable to afford an attorney. Only the [assistance] of counsel will assure that meritorious claims will be fairly presented and full advantage taken of the procedures and investigation contemplated by the rule.... Because [post-conviction relief law] requires [the] development of genuine issues of fact in order to merit an evidentiary hearing, the [right to] counsel ... must be extended to require representation at the time the initial application is filed.

Donnelly, 516 P.2d at 399.

In other words, as this Court noted in *Grinols*, the supreme court held in *Donnelly* "that defendants [are] entitled to the assistance of counsel, not just in litigating petitions that survive [] summary dismissal, but also during the initial preparation and investigation of a post-conviction relief case." FN2

FN2. *Grinols*, 10 P.3d at 622.

We now return to the situation presented in Holden's case.

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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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"[w]hen ... an attorney appointed to represent an indigent petitioner for post-conviction relief concludes that the petition stands or falls on the issue of whether it is barred by one of the limitation periods codified in AS 12.72.020(a)(3)" -the attorney is obliged to "investigate potential defenses to the limitation period" and, if that investigation yields "no colorable defense to the limitation period", then the attorney's "no arguable claims" certificate "must fully explain the attorney's investigation, and the results of that investigation, to the superior court". *Id.* at 856.

Our decision in *One* was grounded on our earlier decision in *Griffin v. State*, 18 P.3d 71 (Alaska App.2001). In *Griffin*, we held that even though an attorney appointed to represent an indigent petitioner for post-conviction relief might properly move to withdraw from the case if the petitioner had no arguable claim for relief, the petitioner's constitutional right to zealous representation would not be adequately protected unless the attorney's "no arguable merit" certificate contained "a full explanation of all the claims the attorney ha[d] considered and why the attorney ha[d] concluded that these claims [were] frivolous". *Griffin*, 18 P.3d at 77.

In *One*, we applied *Griffin* to a particular recurring situation: the situation where a court-appointed attorney files a request to withdraw under Criminal Rule 35.1(e)(2)(C) after concluding that all of the petitioner's claims are frivolous

because they are time-barred. For present purposes, the crucial aspect of our decision in *One* is our conclusion that *Griffin* requires attorneys to give a full explanation of their statute-of-limitations analysis in this situation.

Our conclusion in *One* was implicitly premised on the idea that an indigent petitioner for post-conviction relief is entitled to the zealous assistance of counsel when litigating the issue of the petition's timeliness.

[2] We now expressly affirm this implicit premise: When an indigent defendant's first petition for post-conviction relief is challenged as time-barred under AS 12.72.020, the defendant has a constitutional right to the assistance of counsel when responding to that challenge.

*819 Conclusion

The two decisions of the superior court (refusing to appoint counsel to represent Holden, and dismissing his petition for post-conviction relief as time-barred) are REVERSED. The superior court shall re-open Holden's petition for post-conviction relief, and the superior court is directed to appoint counsel to represent Holden for the limited purpose of assessing and, if necessary, litigating whether his petition for post-conviction relief is time-barred under AS 12.72.020.

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We do not retain jurisdiction of this case

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Alaska State Legislature

Representative Max F. Gruenberg
Representative Carl Gatto



State Capitol
Juneau, Alaska
99801 '182

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 743-6074.

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

1 of 3

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

- 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

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 323(JUD), Draft Version "E"

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

2 Insert "relating to arson and criminally negligent burning;"

3

4 Page 4, following line 10:

5 Insert new bill sections to read:

6 ** Sec. 7. AS 11.46.410(a) is amended to read:

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

10 * Sec. 8. AS 11.46 is amended by adding a new section to read:

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

14 (1) violates AS 11.46.430; and

15 (2) has been previously convicted of violating AS 11.46.400 -
16 11.46.430 or AS 41.15.150 or a law or ordinance of this or another jurisdiction with
17 elements similar to those offenses.

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

19 * Sec. 9. AS 11.46.430 is amended to read:

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

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

1 misdemeanor."

2

3 Renumber the following bill sections accordingly.

4

5 Page 6, following line 19:

6 Insert a new bill section to read:

7 "* Sec. 17. AS 12.55.127(c) is amended to read:

8 (c) If the defendant is being sentenced for

9 (1) escape, the term of imprisonment shall be consecutive to the term
10 for the underlying crime;

11 (2) two or more crimes under AS 11.41, a consecutive term of
12 imprisonment shall be imposed for at least

13 (A) the mandatory minimum term under AS 12.55.125(a) for
14 each additional crime that is murder in the first degree;

15 (B) the mandatory minimum term for each additional crime
16 that is an unclassified felony governed by AS 12.55.125(b);

17 (C) the presumptive term specified in AS 12.55.125(c) or the
18 active term of imprisonment, whichever is less, for each additional crime that
19 is

20 (i) manslaughter; or

21 (ii) kidnapping that is a class A felony;

22 (D) two years or the active term of imprisonment, whichever is
23 less, for each additional crime that is criminally negligent homicide;

24 (E) one-fourth of the presumptive term under AS 12.55.125(c)
25 or (i) for each additional crime that is sexual assault in the first degree under
26 AS 11.41.410 or sexual abuse of a minor in the first degree under
27 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those
28 offenses; and

29 (F) some additional term of imprisonment for each additional
30 crime, or each additional attempt or solicitation to commit the offense, under
31 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, [OR]

1 11.41.500 - 11.41.520, or AS 11.46.400 - 11.46.430."

2

3 Renumber the following bill sections accordingly.

4

5 Page 11, line 21:

6 Delete "secs. 17 and 18"

7 Insert "secs. 21 and 22"

8

9 Page 11, line 22:

10 Delete "sec. 19"

11 Insert "sec. 23"

12

13 Page 11, line 28:

14 Delete "Sections 3, 4, 7, 13 - 15, 20, and 24"

15 Insert "Sections 3, 4, 7 - 10, 16 - 18, 24, and 28"

16

17 Page 12, line 3:

18 Delete "Sections 8, 9, 23, and 25"

19 Insert "Sections 11, 12, 27, and 29"

20

21 Page 12, line 6:

22 Delete "Sections 10 - 12, 21, and 22"

23 Insert "Sections 13 - 15, 25, and 26"

24

25 Page 12, line 9:

26 Delete "Section 16"

27 Insert "Section 19"

28

29 Page 12, line 14:

30 Delete "Sections 17 - 19 and 26"

31 Insert "Sections 21 - 23 and 30"

