

HB

316

<target><bill>HB 316</bill><subject>HB
316</subject><comm>HFIN26</comm></target>

AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSHB 316(JUD)

BY REPRESENTATIVE GARA

- 1 Page 8, line 3:
- 2 Delete "or a lesser included offense"

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: CSHB 316(JUD)

1 Page 8, line 3, following "offense;":

2 Insert "and"

3

4 Page 8, line 6:

5 Delete "and"

6

7 Page 8, lines 7 - 10:

8 Delete all material.

9

10 Page 9, lines 1 - 4:

11 Delete all material.

12

13 Renumber the following paragraphs accordingly.

14

15 Page 9, lines 21 - 22:

16 Delete "(A) is not inconsistent with a defense presented at trial; and

17 (B)"

AMENDMENT #3

OFFERED IN THE HOUSE
TO: CSHB 316(JUD)

BY REPRESENTATIVE GARA

- 1 Page 9, line 30, following "innocent;":
- 2 Insert "and"
- 3
- 4 Page 10, lines 2 - 3:
- 5 Delete "; and
- 6 (12) the application is timely as described in AS 12.73.040"
- 7
- 8 Page 10, lines 12 - 19:
- 9 Delete all material.
- 10
- 11 Page 16, lines 24 - 26:
- 12 Delete all material.

AMENDMENT #4

OFFERED IN THE HOUSE
TO: CSHB 316(JUD)

BY REPRESENTATIVE GARA

- 1 Page 11, line 6, following "expense":
- 2 Insert "except that the court may waive some or all of these expenses based on the
- 3 applicant's ability to pay"

Conceptual AMENDMENT #5

OFFERED IN THE HOUSE

TO: HB 316

By Gara
By Request

1 Page 9, line 14:

2 Delete "best"

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 316
 (H) Publish Date: 1/27/10

Identifier (file name): 0812-DOA-OPA-12-15-09 Dept. Affected: DOA
 Title: An Act relating to post-conviction DNA testing . . . RDU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor: _____
 Requester: Governor Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| 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 (FY2010) cost: _____

POSITIONS

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill would create a procedure for DNA testing in post-conviction cases where a defendant was convicted of a crime under AS 11.41. The bill also creates a procedure for preserving and destroying physical evidence as well as a task force for standards for preservation of evidence. Because OPA handles all of the conflicts of interest from the Public Defender Agency, including any claims by clients that they received ineffective assistance of counsel from their PDA trial attorney, the agency receives a substantial portion of the post-conviction relief assignments. It is possible that cases filed under this new procedure could increase the attorney and support staff workload. Additionally, the agency must rely upon private contractors to handle a portion of these cases when the agency staff has a conflict of interest. The agency does not predict a significant fiscal impact as a result of this statute and therefore submits a zero fiscal note.

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

Phone 907-269-3504
 Date/Time 12/23/2009, 4:00 PM
 Date 12/23/2009

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 316
(H) Publish Date: 1/27/10

Identifier (file name): 0812-DOA-PDA-12-15-09 Dept. Affected: Administration
Title: An Act relating to post-conviction DNA testing..... RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: _____
Requester: Governor Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|------------|
| | | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 | |
| OPERATING EXPENDITURES | | | | | | | | | |
| Personal Services | 0.0 | | 0.0 | | 0.0 | | 0.0 | | 0.0 |
| Travel | 0.0 | | 0.0 | | 0.0 | | 0.0 | | 0.0 |
| Contractual | 0.0 | | 0.0 | | 0.0 | | 0.0 | | 0.0 |
| Supplies | 0.0 | | 0.0 | | 0.0 | | 0.0 | | 0.0 |
| Equipment | 0.0 | | 0.0 | | 0.0 | | 0.0 | | 0.0 |
| Land & Structures | | | | | | | | | |
| Grants & Claims | | | | | | | | | |
| Miscellaneous | | | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 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 | 0.0 | | 0.0 | | 0.0 | | 0.0 | | 0.0 |
| 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 | 0.0 | 0.0 |

Estimate of any current year (FY2010) cost: _____

POSITIONS

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached page

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

Phone 907 334-4414
Date/Time 12/23/2009, 4:00 PM
Date 12/23/2009

FISCAL NOTE #2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 316

ANALYSIS CONTINUATION

This bill creates procedures for obtaining post-conviction DNA testing, for preserving physical evidence, for destroying physical evidence, and creates a task force on standards for preservation of evidence.

It is expected that the Agency will receive new post-conviction appointments. The Innocence Project has received approximately 130 requests for assistance from convicted defendants asserting claims of innocence over the past 4 years. Additionally, the bill requires all petitioners whose convictions were entered before a certain date to file a petition by July 1, 2013. This is expected to increase the number of applications within the first three years of the bill.

The new appointments could increase costs due to attorney review and paralegal resources that must be applied to process the cases. It is difficult to predict how many cases or the level of review that will be required, but the Agency does not predict a significant increase and therefore submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 316
 (H) Publish Date: 1/27/10

Identifier (file name): JU2009200812 Dept. Affected: DOC
 Title: "Act relating to post-conviction DNA testing; preservation of
evidence, DNA identification registration system to post-conviction ..." RDU: Administration & Support
 Sponsor: Rules Committee Component: Office of the Commissioner
 Requester: Governor Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| 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 () | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|

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 (FY2010) cost: _____

POSITIONS

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This legislation relates to post-conviction deoxyribonucleic acid (DNA) testing, preservation of certain evidence, and to the DNA identification registrations system to post-conviction relief procedures.

Passage of this legislation should have no fiscal impact on the Department of Corrections current DNA testing process.

Prepared by: Leslie Houston, Director
 Division: Administration and Support
 Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections

Phone: (907) 465-3339
 Date/Time: 1/4/2010 0730 AM
 Date: 1/4/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 316
 (H) Publish Date: 1/27/10

Identifier (file name): 0812-DPS-SCDL-12-30-09 Dept. Affected: Public Safety
 Title: "An Act relating to post-conviction DNA testing" RDU: Statewide Support
 Component: Scientific Crime Detection Laboratory
 Sponsor: Rules Committee
 Requester: Governor Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| 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 (FY2010) cost: _____

POSITIONS

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation would require post-conviction DNA testing for those who meet the legal requirements, allow for the preservation of certain evidence for possible future forensic testing, and requests amendments to the DNA identification registration system statute, 44.41.035, all of which would directly affect the State Crime Laboratory. The bill also contains proposals that would not affect the Crime Lab.

The State Crime Lab has hired and trained three new Forensic Technicians in the past year. With this addition in personnel the Evidence Section has been able to implement new procedures that have significantly reduced evidence turnaround time. Intensive inventory and focus on the creation of valuable space has brought that Section (cont.)

Prepared by: Orin Dym
 Division: Scientific Crime Detection Laboratory
 Approved by: Joe Masters, Commissioner
Department of Public Safety

Phone (907) 269-5743
 Date/Time 12/31/09 8:10 AM
 Date 12/31/2009

FISCAL NOTE #4

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 316

ANALYSIS CONTINUATION

forward in anticipation of a possible increase in evidence retention and submissions for analysis due to proposed legislation. These actions are believed to be sufficient to handle the increase in submissions should this proposed legislation become law and is believed to be able to carry the laboratory forward approximately 2-4 years before fiscal impact would become likely.

Because it is not understood just how much of an increase in evidence submissions for analysis and for retention the laboratory will ultimately see, it may be that a revised fiscal note will become necessary in the future; however, at this time the Department does not foresee a fiscal impact beyond its current needs.

The Section (s) revision to 44.41.035 speaks to the authority of the Department of Public Safety to obtain a subsequent DNA sample should the original sample not provide a profile adequate for database entry. Although the frequency of samples failing to provide sufficient information is relatively small, this is a critical concern and this addition to the statute would provide resolution. Because the number of subsequent sample requests is determined to be low, the laboratory does not anticipate fiscal impact resulting from passage of this amendment.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: HB 316
 (H) Publish Date: 1/27/10

Identifier (file name): 0812-Law-Crim-12-31-09 Dept. Affected: Law
 Title An Act relating to post-conviction DNA RDU Administration and Support
 Component Office of the Attorney General
 Sponsor Rules Committee
 Requester Governor Component Number 2162

Expenditures/Revenues (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | 4.0 | | 2.0 | | | | | |
| Contractual | | | | | | | | |
| Supplies | | | | | | | | |
| Equipment | | | | | | | | |
| Land & Structures | | | | | | | | |
| Grants & Claims | | | | | | | | |
| Miscellaneous | | | | | | | | |
| TOTAL OPERATING | 4.0 | 0.0 | 2.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | | | |
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| CHANGE IN REVENUES () | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | 4.0 | | 2.0 | | | | |
| 1005 GF/Program Receipts | | | | | | | |
| 1037 GF/Mental Health | | | | | | | |
| Other Interagency Receipts | | | | | | | |
| TOTAL | 4.0 | 0.0 | 2.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2010) cost: _____

POSITIONS

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill relates to post-conviction DNA testing, preservation of certain evidence, and to the DNA identification system to post-conviction relief procedures.

Anticipated costs to the Department include:

Costs associated with one day quarterly meetings. The travel costs assumes that two of the positions will be reimbursed for their travel costs at approximately \$1,000 per meeting.

The fiscal note anticipates the report to be delivered electronically to the governor and legislature.

Prepared by: Eileen Donahue, Division Operations Manager
 Division Administrative Services Division
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone (907)465-5427
 Date/Time 12/31/09 12:00 AM
 Date 12/31/2009

HOUSE FINANCE COMMITTEE
HB 316 – POST-CONVICTION DNA TESTING; EVIDENCE
SIGN-IN

NAME: Quenton Steiner

Dept./Company: Public Defender Agency Title: Director

Email: _____ Phone: _____

Do you wish to testify? Yes No Respond To Questions

NAME: Orin Dym

Dept./Company: State, DPS - Crime Lab Title: Forensic Lab. Manager

Email: Orin.dym@alaska.gov Phone: 907-268-5743

Do you wish to testify? Yes No Respond To Questions

NAME: _____

Dept./Company: _____ Title: _____

Email: _____ Phone: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____

Dept./Company: _____ Title: _____

Email: _____ Phone: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____

Dept./Company: _____ Title: _____

Email: _____ Phone: _____

Do you wish to testify? Yes No Respond To Questions

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

SEAN PARNELL,
GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

CS FOR HOUSE BILL 316(JUD) EVIDENCE RETENTION AND POST-CONVICTION DNA TESTING Sectional Analysis

Sections 1 and 2 are conforming amendments to clarify that the evidence retention provisions in the bill take precedence over the provisions of AS 12.36.010 – 12.36.090 that address disposition of evidence in various circumstances, including disposal of unclaimed property.

Section 3 proposes a new statute in AS 12.36, Preservation of Evidence, that would require municipal police departments, the Department of Public Safety, the Department of Law, and the Alaska Court System to preserve both physical evidence and biological evidence for the periods described below. The highlights include:

- The retention requirements apply to an investigation and prosecution of homicide (murder, manslaughter, and criminally negligent homicide), sexual assault in the first degree, and sexual abuse in the first degree.

Because this is a new (and unfunded) duty imposed on municipal agencies in addition to state agencies, the bill was drafted to apply to a limited number of offenses; the offenses are the most likely to include evidence with DNA as part of the investigation and prosecution.

- Requires evidence (not including biological material) to be retained until the expiration of the prosecution, including the time for completing an appeal (including time for applying for review to the United States Supreme Court) or the litigation of any post-conviction relief application.

The bill allows agencies to preserve samples of evidence if the item itself is impractical or hazardous to preserve. It recognizes that municipal police agencies will have varying storage capacity; that is, a rural agency may have a smaller storage ability than a larger municipality. The bill requires each agency to adopt written policies addressing removal and preservation of samples.

- Requires biological material to be retained by an agency until the defendant is unconditionally discharged for the crime (including any period of probation or parole), the period the person is required to register as a sex offender, or until the period for retention of physical evidence have expired, whichever is longer.

Biological material is defined to include the contents of a sexual assault examination kit, all human bodily material collected in the investigation, slides, swabs, or test tubes containing human bodily material, and swabs or cuttings from other evidence that contain human bodily material.

- The bill adopts a procedure for an agency, after notice to the parties and their attorneys, to dispose of or return evidence or biological material if no party objects to the disposal or return of the evidence or biological material. If there is an objection, it allows the agency to request the court to allow the disposal or return of evidence or biological material.
- The remedy for an agency's failure to preserve evidence and biological material is left to the court. However, a court may not reverse or otherwise vacate a conviction based solely on a good faith violation of the new law.
- The bill prohibits a person from bringing a civil action against an agency for a good faith failure to abide by the new requirements.

Section 4 requires that a person who seeks post-conviction DNA testing to support a claim of innocence to bring the application for testing under AS 12.73, proposed in the bill.

Section 5 clarifies practice in the area of post-conviction relief by putting in statute the common law rule that requires an applicant to plead a prima facie case for post-conviction relief, and the court make a finding that a prima facie case has been pled before the state responds. Then the parties may pursue discovery on the matter. *State v. Jones*, 759 P.2d 558, 565-566.

Section 6 adopts procedures for post-conviction DNA testing. These include the following:

- **Sec. 12.73.010** sets out the information that must be included in an application for post-conviction DNA testing. The applicant must file
 - An affidavit by the applicant that states

- that the applicant did not commit the crime for which he was convicted or any lesser included offense;
 - that the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, the offense or any lesser included offense;
 - that the applicant did not admit or concede guilt for the offense in any official proceeding; the entry of a plea of guilty or nolo contendere is not considered an admission or concession of guilt for purposes of this requirement;
 - An affidavit by the applicant or the applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant;
 - An affidavit by the applicant or the applicant's lawyer describing previous efforts to obtain DNA testing;
 - An affidavit by the applicant's trial lawyer stating the reason the DNA testing was not requested at the trial level, or an affidavit stating the efforts taken to obtain this affidavit.
- **Sec. 12.73.020** provides the standards for when a court may order post-conviction DNA testing. These include:
 - The applicant was convicted of a felony against a person (AS 11.41);
 - Completion of the affidavits required by AS 12.73.010 have been submitted;
 - The applicant has not admitted or conceded guilt in an official proceeding; again entry of a plea of guilty or nolo contendere is not considered an admission or concession for this sectional;
 - The evidence was obtained as part of an investigation of the crime;
 - Either
 - The evidence has not been tested;

- The evidence has been previously tested, the applicant is requesting a more probative test; or
 - The court determines that granting the application is in the best interest of justice;
 - The evidence has been retained under conditions that ensure that it has not changed in a way that would undermine the accuracy of the test;
 - The applicant proposes a defense theory not inconsistent with the defense at trial, and that would establish innocence;
 - If the defendant was convicted at trial, the identity of the perpetrator was an issue;
 - There is a reasonable probability that the testing requested will produce new evidence that would support the new defense theory and could establish innocence;
 - The applicant consents to give a DNA sample and to have that sample entered into the DNA identification registration system; and
 - The application is timely.
- **Sec. 12.73.030** allows for summary dismissal by the court if the application does not include the information required. If the application is not summarily dismissed the prosecuting authority has 45 days to file a response.
 - **Sec. 12.73.040** adopts presumptions regarding timeliness. There is a presumption that filing an application within three years after conviction is timely; this may be rebutted if the application is repetitive. There is a presumption that an application filed later is untimely; this may be rebutted for any good cause.
 - **Sec. 12.73.050** adopts procedures for collecting DNA samples. It also provides that the testing must be performed at a laboratory operated by the state or approved by the state. The cost of testing will be paid for by the state; if the applicant requests additional testing, the applicant must pay for it, and it must be performed at an accredited laboratory or one approved by the Department of Public Safety.

- **Sec. 12.73.060** clarifies that the prosecution and an applicant may stipulate to DNA testing without following the procedures in the bill.
- **Sec. 12.73.070** includes definitions for the new chapter.

Section 7 provides that an indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing.

Sections 8 – 12 make clarifying amendments to the DNA identification registration system statutes. The bill clarifies that a minor must be 16 years of age or older at the time of offense for the minor's DNA to be entered into the database. It also requires that the Department of Public Safety remove a DNA sample entered into the database if the individual was found not guilty for the offense that was the basis of the DNA entry. The bill also makes several draft changes to improve the readability of the law.

Section 13 provides that a DNA sample from the registration system may be used in a criminal investigation if it was mistakenly in the system, if the error was made in good faith. Section 13 also clarifies that if a sample does not include sufficient material to obtain an accurate identification, another sample may be taken.

Section 14 notes the effect the bill has on Rule 35.1, Alaska Rules of Criminal Procedure.

Section 15 creates a task force to consider and recommend standards for preservation of evidence. The task force would consist of the attorney general, the commissioner of public safety, a chief of police from a community not on the state's road system, a chief of police from a municipal department, the state medical examiner, representatives from the crime laboratory and the court system, the victims' advocate, the public defender, a member of the Alaska senate, a member of the Alaska house of representatives; a representative of the office of public advocacy, and a representative of the Alaska Native Justice Center.

The task force's work would be to recommend standards for collection, storage, organization, cataloging, disposal, return to owners, and retrieval of evidence; identify sources of financial help for implementing the standards; and recommend minimum qualification and training of persons responsible for storing evidence. After completing its work, the task force will report its recommendations to the legislature.

Sections 16 – 19 include applicability and effective date provisions.

Helen Phillips

From: Rep. Bill Stoltze
Sent: Wednesday, March 24, 2010 6:19 PM
To: House Finance Legislation
Subject: FW: HB 316
Attachments: FINANCECOMMITTEELETTER.doc

Please add to the packet. Thanks

From: info@alaskainnocence.org [mailto:info@alaskainnocence.org]
Sent: Wednesday, March 24, 2010 5:18 PM
To: Rep. Bill Stoltze
Cc: Rep. Mike Hawker; Rep. Alan Austerman; Rep. Anna Fairclough; Rep. Reggie Joule; Rep. Mike Kelly; Rep. Mike Doogan; Rep. Neal Foster; Rep. Les Gara; Rep. Woodie Salmon; Rep. Bill Thomas
Subject: HB 316

Dear Representative Stoltze and Members of the House Finance Committee:

My name is Bill Oberly and I am the Executive Director of the Alaska Innocence Project. I will be providing oral testimony on HB 316 at the hearing tomorrow, March 25, 2010. However, in an attempt to keep that testimony short and concise, I have attached a more complete written testimony to this e-mail.

The Alaska Innocence Project is very interested in passage of fair and workable post-conviction DNA testing bill. I believe our proposed amendments to the current version of HB 316 will go a long way to insuring that is done.

Thank you for the opportunity to present this to you.

Bill Oberly
Executive Director
Alaska Innocence Project
907-279-0454
info@alaskainnocence.org

ALASKA INNOCENCE PROJECT

**WRITTEN TESTIMONY IN SUPPORT OF ORAL TESTIMONY OF
WILLIAM B. OBERLY, EXECUTIVE DIRECTOR
ALASKA INNOCENCE PROJECT
BEFORE THE ALASKA HOUSE FINANCE COMMITTEE
HB 316 – AN ACT RELATING TO POST-CONVICTION DNA TESTING
MARCH 25, 2010**

Thank you to the House Finance Committee for giving me the opportunity to give oral testimony and to submit this written document in support of those comments on HB 316.

Access to post-conviction DNA testing is among the most important issues for the Alaska Innocence Project. We thank Governor Parnell for recognizing the importance of this issue by proposing a bill dealing with this subject. However, the Alaska Innocence Project cannot support HB 316 as it is currently written. The effect of HB 316 as currently written is to drastically limit access to DNA testing in Alaska. A number of modifications will need to be made before this bill is in line with the current approach to DNA testing accepted in the rest of the country.

In this letter I will try and describe the specific areas of HB 316 which serve to deny DNA testing to individuals with innocence claims in the state of Alaska. I will discuss the sections of the bill in the order of significance and impact on innocence claims. If these sections are removed from the bill, HB 316 will then provide a procedure for wrongfully convicted Alaskans to obtain post-conviction DNA testing to establish their innocence.

The first area of concern is the prohibitions on testing contained in this bill. The combined effect of these prohibitions is to deny virtually every person currently in prison who would seek DNA testing. This approach flies directly in the face of current thinking, which was described by Senator Patrick Leahy when he sponsored the federal Innocence Protection Act. "The criminal justice system should err on the side of permitting testing, in light of the low cost of DNA testing and the high cost of keeping the wrong person locked up."

The most serious prohibition on testing in HB 316 is contained on page 10, lines 11 through 23 of the bill in Sec. 12.73.040, entitled Timeliness. This section establishes a presumption of untimeliness if an application for post-conviction testing is not filed within three years. This restriction will prohibit most, if not all, innocent individuals who are currently incarcerated from obtaining the testing necessary to establish their innocence. This section would make post-conviction DNA testing claims in Alaska much more limited than under the current process of

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post-conviction claims based on newly discovered evidence. Time limitations ignore the fact that without proper preservation standards and requirements, as well as state of the art identification methods, exculpatory DNA evidence may only be located after years have elapsed. It should be remembered that, unlike other forms of evidence, DNA evidence is not less reliable as time goes by, one of the main reasons for limiting the time within which to bring new evidence motions based on other evidence. Establishing that an incarcerated individual is actually innocent of the crime for which they have been convicted should not be limited by arbitrary time limits.

Page 9 section (5) at lines 2 through 13. This section prohibits an individual from seeking testing if evidence was not subjected to DNA testing at the trial level or a more probative method of DNA testing was not used, and the applicant waived the testing or the applicant's lawyer did not test for tactical reasons. This section denies the reality of the real world that bad lawyering is one of the most common causes of wrongful convictions. Since we are dealing with claims of actual innocence, it would be improper to deny an individual the opportunity to perform the most accurate tests on evidence to establish innocence because a trial lawyer made a bad decision, or couldn't afford a test. The problem is compounded in this bill by allowing the trial lawyer to cover the bad decision by requiring an affidavit from the trial lawyer explaining their actions. It is presumed under this bill that if a lawyer chooses to spend the limited resources available in a defense case on other than DNA testing, this decision will preclude post-conviction testing to establish that an individual is innocent. In our system of justice, innocence should not be able to be waived.

Page 8 subsection (C) at lines 5 through 7 and section (3) at lines 29 through 30. These sections make post-conviction DNA testing unavailable to anyone who admits or concedes guilt in any official proceeding or whose statement of guilt was the basis of the conviction. This section, again, denies hard facts we have learned from the 249 DNA exonerations nationwide, that 25% of those exonerations have involved an innocent individual who admitted their guilt or pled guilty to the crime. While the State has amended its original version of HB 316 to exclude those people who pled guilty or no contest to a charge, the bill continues to prevent any individual who has made an admission under oath at any point in a case from obtaining DNA testing. This category of wrongfully convicted individuals is largely represented by the most vulnerable in society; young people, people with mental disabilities, those most susceptible to suggestion. Rather than protecting the vulnerable in our society, this bill aims to take advantage of them. Form is clearly more important than justice when a law takes advantage of our most vulnerable citizens.

Page 9 section (10) at lines 24 through 29. This section of the bill calls for the court considering a post-conviction DNA testing request to guess at the outcome of the requested testing based on the court's view of other evidence. Other states and the federal government, when establishing a standard for the court to apply to the requested evidence, reasonably assume a favorable result of the testing for the petitioner, and then have the court decide if that would establish a reasonable probability that the petitioner would not have been convicted. This long established standard does not require a judge to try and guess what the result of the requested DNA testing might be. Rather, it reasonably asks a court to decide whether a favorable test result would be significant in the outcome of the case.

Page 3 section (d), lines 29 through 31. Also page 11, lines 17 through 18. This term of the bill calls for the person requesting evidence be tested pay for its retrieval. This is a concept totally unique to the Alaska post-conviction DNA testing process. Not one statute passed by any other state or the federal government imagines such a requirement. An irony in including this section where it is in the bill is that it follows a section which requires an agency holding preserved evidence to produce an inventory of that evidence. It must be presumed that the agency will actually confirm they have each of the items on the inventory before providing it. Under this bill, after physically confirming they have each piece of evidence, the holding agency will then get to turn around and charge for going back again and collecting it. A more reasonable approach would envision the agency putting the evidence in a convenient place at the time of preparing the inventory, thus performing their work more efficiently, while doing away with the need to charge to collect evidence. A serious impact of this section will be that some individuals will be precluded from obtaining the evidence due to an inability to pay this tax on their right to DNA testing. The section is particularly offensive since evidence does not belong to one side or the other, but rather to the people. Charging a person claiming innocence to collect the evidence is inconsistent with this concept.

Page 2 lines 25 through 31 through page 3 lines 1 through 6. This section sets deadlines for destruction of evidence obtained during the investigation of a case rather than allows the Task Force which is established at the end of the bill to study the issue and make recommendations. SB110 also established a task force with a wide ranging mandate to study evidence preservation issues, including the issue of proper retention. Reasonably, one of the issues that task force was to report back on was destruction deadlines. HB316 also establishes a task force but, without any study, also creates time limits for destruction. This does not seem to be making the best use of the task force created.

As an example of why more study might be necessary, this section also seems to allow for destruction of evidence if a challenge to the conviction is filed in federal district court. The section defining "direct review" mentions only judgment on appeal, petition for hearing and review by the United States Supreme Court. A task force studying this issue and making recommendations would most likely recommend evidence be retained during the pendency of a habeas action filed in federal district court.

The concerns listed above set out serious shortfalls in the contents of HB 316. If these sections are allowed to remain in the bill, unchanged, not only would post-conviction DNA testing be more difficult for the wrongfully convicted in Alaska to obtain than it currently is, it would be more difficult than anywhere else in the country. I urge the committee to correct these problems by removing the language of HB 316 set out above before the bill is passed out of committee. If the sections I have identified are removed from HB 316, the bill will then actually provide innocent individuals with a procedure to obtain post-conviction DNA testing of potentially exculpatory evidence. Alaska will have a bill that works.

March 25, 2010

Thank you for allowing me to address this very important legislation. If the committee has any questions on any matters arising from HB 316 which I might help answer, please don't hesitate to contact me.

William B. Oberly
Executive Director
Alaska Innocence Project

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Governor Sean Parnell
STATE OF ALASKA

January 25, 2010

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

Dear Speaker Chenault,

Under the authority of Art. III, Sec. 18, of the Alaska Constitution, I am transmitting a bill that adopts procedures for post-conviction deoxyribonucleic acid (DNA) testing and evidence retention.

This bill will adopt standards for evidence retention and disposal. As well as procedures for post conviction DNA testing and address changes in the DNA identification registration system.

The United States Supreme Court recently upheld Alaska's post-conviction procedures against a challenge based on due process of the law. In the District Attorney's Office for the *Third Judicial District v. Osborne*, 129 S. Ct. 2308 (2009), the court found Alaska's post-conviction relief statutes and procedures to be constitutional. While our current law is legally satisfactory, provide statutory guidance for granting post-conviction DNA testing will allow policy makers to adopt the most reasonable balance for ensuring that a person is not mistakenly convicted, and at the same time will protect the vast majority of convictions that are correct.

A person who has been convicted of a crime, and whose conviction has been upheld on appeal, has already had adequate opportunity to argue legal issues arising at trial and on appeal. The post-conviction DNA testing procedure should be limited to cases where the person reasonably claims that the wrong person was convicted. The bill provides for post-conviction DNA testing when there is a reasonable probability that the testing would produce evidence that could conclusively establish that the applicant is innocent.

The bill addresses retention of physical evidence and biological material in homicide, sexual assault, and abuse cases, and provides standards that may vary according to the community and the law enforcement resources of that community. A small community may be unable to retain large items of evidence in a criminal prosecution, but it can preserve samples of the evidence for use in future DNA testing or other post-conviction procedures. A larger community may have more space for evidence retention, and would be able to keep more of the original evidence rather than cutting representative samples of it. The bill also includes a procedure in which a law enforcement agency,

The Honorable Speaker Chenault
January 25 2010
Page 2

after giving notice to all parties, may dispose of physical evidence and biological material if there is no objection to the disposition.

In addition to keeping evidence so that it may be used at a later date, law enforcement and other agencies, such as courts and prosecution offices, must safeguard it so that it is useful for possible future testing. The bill authorizes the establishment of a task force to include law enforcement, prosecutors, the court system, a representative from the crime laboratory, and the medical examiner to develop policies and procedures for maintaining evidence in a way that will protect and safeguard against tampering or degradation. Standards for evidence collection and retention will be established as well.

Although the Alaska post-conviction law has been upheld by the United States Supreme Court, standards for evidence retention and a procedure for post-conviction DNA testing will strengthen the current law and provide one more protection in our justice system.

I urge your prompt and favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Parnell", written over a horizontal line.

Sean Parnell
Governor

Enclosure

Helen Phillips

From: Ben Mulligan
Sent: Friday, April 02, 2010 3:35 PM
To: House Finance Legislation
Subject: FW: Austerman/HB316-Q's re:"System"

Would you please add this to the members folder for HB 316?

Thank you.

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

From: Stancliff, Sue M (DPS) [mailto:sue.stancliff@alaska.gov]
Sent: Wednesday, March 31, 2010 1:09 PM
To: Cliff Stone
Subject: Austerman/HB316-Q's re:"System"

On page 13, lines 5-14 of the CS it states; "may request the Department of Public Safety to destroy the material in the system regarding the person or minor under the provisions described in (i) of this section."

The questions are these:

1. What is meant by the term "system?"

The system refers to the CODIS (Combined DNA Index System) database and the LIMS (Laboratory Information Management System) used by the laboratory. The CODIS database contains the actual DNA profile, identified by a unique numeric identifier. The LIMS contains the personal information assigned to the unique numeric identifier (i.e. name, DOB, APSIN #, place of birth, race and gender). When a sample is "expunged" the DNA profile is deleted from CODIS, the record in LIMS is secured (name and APSIN removed) and the sample (blood or buccal) is destroyed.

2. Is it exclusively APSIN or are there other elements of the system?

The DNA Identification Registration System and the Laboratory Information Management System are separate from the APSIN database.

3. Who has access to the system?

Access to the CODIS database is restricted to DNA personnel who have completed training and received clearance from the FBI. Access to the LIMS is restricted to laboratory personnel.

4. What protocols are in place to ensure that outdated info is purged completely from the system?

The laboratory has a procedure that is followed to expunge records from

CODIS and LIMS (in accordance with state statute and federal law). A checklist is maintained (by the CODIS Administrator) for each expunged sample. When a record is purged as the result of a court ordered expungement, a letter indicating compliance is sent to the originator of the request.