

**HB**

**316**

**Representative Jay Ramras**  
**Chair, Judiciary**  
**Chair, Economic**  
**Development, Trade &**  
**Tourism**  
**Energy**  
**Military & Veteran Affairs**  
**Joint Armed Service**  
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# Alaska State Legislature



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**House District 10**

## House of Representatives

### Fax

To: Jerry Luckhaupt  
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 3

From: Jane W. Pierson

Date: March 3, 2010

Re: HB316

Jerry,

The House Judiciary Committee moved out HB316. The HJUD version of the bill will include the following amendments:

✓ Amendment #2 – Amendment A.18

✓ Amendment #3 DOL

Page 3, line 9, following “crime,”

Insert “the person is required to register as a sex offender

✓ Amendment #4 – Amendment A.11

✓ Amendment #5 – Amendment A.17

✓ Amendment #7 – DOL As amended

Page 5, line 6:

Following “a”

Insert: “good faith” The amendment to this amendment is final sentence to read “ The burden of proof to establish good faith shall be on the prosecution.”

Amendment #9 – DOL

Page 8, line 7

Insert the following:

“for purposes of this section, the entry of a guilty or nolo contender plea is not an admission or concession of guilt;”

Page 8, line 30

Following “conviction;”

Insert the following:

“for the purposes of this section, the entry of a guilty or a nolo contender plea is not an admission of guilt;”

Amendment # 10 – Amendment A.8, as amended as follows, but in proper form:

Page 9, lines 3 – 5:

Delete “, and the applicant did not waive, or the applicant’s lawyer did not forgo for tactical reasons, the right to request DNA testing”

Page 9, lines 6 – 13:

Delete all material and insert:

“(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing; or

(C) the court determines that granting the application is in the best interest of justice.”

Amendment #12 – DOL

Page 9, line 29 delete “conclusively”

Amendment #15 – DOL

Page 10, lines 18-23:

Delete all material and insert:

“three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction.”

Amendment #16 – A.16

Amendment #17 – DOL

Page 15, between lines 24 and 25:

Insert the following:

“(9) the public defender;

(10) a member of the Alaska Senate appointed by the President of the Senate;

(11) a member of the Alaska House of Representatives appointed by the Speaker of the House.”

Amendment #18 – A.19 as amended

After amendment 17 Insert:

- (12) a representative of the office of public advocacy
- (13) a representative of the Alaska Native Justice Center

Amendment #19 – A.13

Amendment #20 – A.14

Amendment #21 – DOL

Page 16, lines 28 -30

Delete all materials:

Insert the following:

“(c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing.”

Renumber the following sections accordingly.

**Article 2. Preservation of Evidence**

**W/D Amendment # 1, Holmes, Currently conceptual**  
Sunset all of Article 2 (Page 2, line 23 through Page 6, line 5) to a date after a time that the legislature has had time to review the Task Force's report.

**Passed Amendment #2, Ramras, Conceptual**  
-- Page-3; L. 7-8  
Delete "biological material contained in or found on evidence that is obtained in an investigation and relevant to the prosecution"  
  
Insert "biological material, contained in or found on evidence relevant to an investigation and prosecution."

**Passed Amendment #3, DOL**  
Page 3, line 9, following "crime,"  
Insert "the person is required to register as a sex offender,"

**Passed Amendment # 4, Rep. GRUENBERG - A.11**  
Page 3, line 31, following "storage";  
Insert "unless the person does not have the ability to pay the cost"  
  
Page 11, line 18, following "tested":  
Insert "unless the applicant does not have the ability to pay the cost."

**Oversight of evidence destruction**

**Passed Amendment # 5, Rep. HERRON - A.17**  
Page 4, line 6,  
Delete "with proof of delivery by the United States Postal Service, or"  
Insert "by certified mail with proof of delivery by the United States Postal Service, or by a comparable delivery method with proof of delivery by"

**W/D Amendment # 6, Rep. Lynn - A.6**  
Page 5, lines 5- 6:  
Delete "However, the court may not reverse or vacate a conviction based solely on a violation of the provisions of this section."

**Passed Amendment # 7, DOL AS AMENDED**  
Page 5, line 6:  
Following "a"  
Insert: "good faith" *Burden of proof shall be on the prosecution*

**Post-Conviction DNA Testing Procedures**

**Application**

3.1.10  
2-16-10/Page 1

*W/D*  
**Amendment # 8, Rep. LYNN – A.7**

Page 8, line 1, following "offense"  
Insert "and"

Page 8, line 4:  
Delete "and"

Page 8, Lines 5-7  
Delete all material.

Page 8, lines 29-30  
Delete all material

Renumber the following paragraphs accordingly

Page 9, line 27  
Delete "(8)"  
Insert "(7)"

Page 10, line 12:  
Delete "(12)"  
Insert "(11)"

*Passed*

**Amendment # 9, DOL**

Page 8, line 7  
Insert the following:

"for purposes of this section, the entry of a guilty or nolo contender plea is not an admission or concession of guilt;"

Page 8, line 30  
Following "conviction;"  
Insert the following:

"for the purposes of this section, the entry of a guilty or a nolo contender plea is not an admission of guilt;"

**Findings**

*Passed  
as Amended*

**Amendment # 10, Rep. LYNN - A.8**

Page 9, lines 3-5:  
Delete ", and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to DNA testing"

Page 9, lines 6-13  
Delete all materials and insert:

“(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing;”

**Amendment # 11, Rep. LYNN - A.9** - w/d to be worked on

Page 9, lines 19-23:

Delete all material and insert:

“(8) the applicant identifies a theory of defense that would establish the applicant’s innocence;”

Renumber the following paragraphs accordingly.

Page 10, line 12:

Delete “(12)”

Insert “(11)”

**Amendment # 12, DOL** – Currently conceptual

Page 9, line 29 delete “conclusively”

**Timeliness**

**Amendment # 13, Rep. HOLMES** – Currently conceptual

Page 10, lines 11-23

Delete all material

**Amendment # 14, Rep. HERRON** – A.4

Page 10, line 12, following “12.73.020(12),”:

Insert “there is a presumption of timeliness if the application is filed before the term of imprisonment of the applicant for the crime for which the evidence or biological material is preserved is completed. This presumption of timeliness may be rebutted if the court finds that the application is based solely on information used in a previously denied application.”

Page 10, lines 13-23:

Delete all material.

**Amendment # 15, DOL**

Page 10, lines 18-23:

Delete all material and insert:

“three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction.”

**Task Force**

**Amendment # 16, Ramras for Gatto** A-16

Page 15, line 13 following “PRESERVATION”:

Insert "AND RETENTION"

Page 15, line 14, following "preservation"  
Insert "and retention"

Page 16, line 3, following "cataloging"  
Delete "and"

Page 16, line 4, following "materials"  
Insert", and return of property to owners"

Page 16, line 9:  
Delete the first occurrence of "and"  
Following "materials"  
Insert ", and return of property to owners"

*Passed*  
**Amendment # 17, DOL**

Page 15, between lines 24 and 25:

Insert the following:

"(9) the public defender;

(10) a member of the Alaska Senate appointed by the President of the Senate;

(11) a member of the Alaska House of Representatives appointed by the Speaker of the House."

*Passed*  
**Amendment # 18, Rep. GRUENBERG - ~~A.12~~ A.19**

Page 15, line 24, following AS 24.65.020":

Insert:

(9) the director of the Public Defender Agency, *ALASKA Innocence Project*

(10) a representative of the Alaska Innocence Project *Office of Public Advocacy.*

(11) a representative of the Alaska Native Justice Center"

Page 15, line 25:

Delete "and (6)"

Insert "(6), (10), and (11)"

*Passed*  
**Amendment # 19, Rep. GRUENBERG - A.13**

Page 16, line 3, following "cataloging,":

Insert "retention, disposal,"

*Passed*  
**Amendment # 20, Rep. GRUENBERG - A.14**

Page 16, lines 17-20

Delete all material

*Passed*  
**Uncodified law**

**Amendment # 21, DOL**

Page 16, lines 28 -30

Delete all materials:

Insert the following:

“(c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing.”

Renumber the following sections accordingly.

W/D

**Amendment # 22, Rep. GRUENBERG - A.15** W/D

Page 16, lines 28-30

Delete all material

AMENDMENT

-11 2 PASSED

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: HB 316

1 Page 3, lines 7 - 8:

2 Delete "biological material contained in or found on evidence that is obtained in an  
3 investigation and relevant to the prosecution"

4 Insert "biological material, contained in or found on evidence, relevant to an  
5 investigation and prosecution"

AMENDMENT # 3 *Passed*

OFFERED IN THE HOUSE

TO: HB 316

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Page 3, line 9:

Following "crime,"

Insert "the person is required to register as a sex offender,"

Gruentberg

26-GH2812\A.11

Luckhaupt

2/18/10

AMENDMENT

# 4 PASSED

OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 3, line 31, following "storage":
- 2       Insert "unless the person does not have the ability to pay the costs"
- 3
- 4 Page 11, line 18, following "tested":
- 5       Insert "unless the applicant does not have the ability to pay the costs"

AMENDMENT

# 5 *Passed*

OFFERED IN THE HOUSE

BY REPRESENTATIVE HERRON

TO: HB 316

- 1 Page 4, line 6:
- 2 Delete "with proof of delivery by the United States Postal Service, or"
- 3 Insert "by certified mail with proof of delivery by the United States Postal Service, or
- 4 by a comparable delivery method with proof of delivery by"

AMENDMENT

# 6  
WJD

OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 5, lines 5 - 6:
- 2 Delete "However, the court may not reverse or vacate a conviction based solely on a
- 3 violation of the provisions of this section."

AMENDMENT # 7 Passed

OFFERED IN THE HOUSE

TO: HB 316

Page 5, line 6:

Following "a"

Insert: "good faith" *conceptual amend to amend # 7 PASSES*  
Burden of proof shall be on the prosecution

AMENDMENT

# 8 w/D

OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 8, line 1, following "offense;":
- 2       Insert "and"
- 3
- 4 Page 8, line 4:
- 5       Delete "and"
- 6
- 7 Page 8, lines 5 - 7:
- 8       Delete all material.
- 9
- 10 Page 8, lines 29 - 30:
- 11       Delete all material.
- 12
- 13 Renumber the following paragraphs accordingly.
- 14
- 15 Page 9, line 27:
- 16       Delete "(8)"
- 17       Insert "(7)"
- 18
- 19 Page 10, line 12:
- 20       Delete "(12)"
- 21       Insert "(11)"

AMENDMENT # 9

OFFERED IN THE HOUSE

TO: HB 316

Page 8, line 7:

Following "offense;"

Insert the following:

"for purposes of this section, the entry of a guilty or a nolo contendere plea is not an admission or concession of guilt;"

Page 8, line 30:

Following "conviction;"

Insert the following:

"for purposes of this section, the entry of a guilty or a nolo contendere plea is not an admission or concession of guilt;"

AMENDMENT

#10

OFFERED IN THE HOUSE

TO: HB 216

1 Page 9, lines 3 – 5:

2 Delete “, and the applicant did not waive, or the applicant’s lawyer did not forgo  
3 for tactical reasons, the right to request DNA testing”

4  
5 Page 9, lines 6-13:

6 Delete all material and insert:

7 “(B) was previously subjected to DNA testing, and the  
8 applicant is requesting DNA testing using a method or technology  
9 that is substantially more probative than the previous DNA testing;  
10 or

11 (C) the court determines that granting the application is  
12 in the best interest of justice.”

AMENDMENT #11 w/d

OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 9, lines 19 - 23:
- 2 Delete all material and insert:
- 3 "(8) the applicant identifies a theory of defense that would establish the
- 4 applicant's innocence;"
- 5
- 6 Renumber the following paragraphs accordingly.
- 7
- 8 Page 10, line 12:
- 9 Delete "(12)"
- 10 Insert "(11)"

DOL

CONCEPTUAL AMENDMENT #12

OFFERED IN THE HOUSE

TO HB 316

Page 9, line 29 delete "conclusively"

CONCEPTUAL AMENDMENT # 13

OFFERED IN THE HOUSE

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TO HB 316

Page 10, lines 11-23  
Delete all material

# 14  
AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HERRON

TO: HB 316

1 Page 10, line 12, following "12.73.020(12),":

2 Insert "there is a presumption of timeliness if the application is filed before the term of  
3 imprisonment of the applicant for the crime for which the evidence or biological material is  
4 preserved is completed. This presumption of timeliness may be rebutted if the court finds that  
5 the application is based solely on information used in a previously denied application."

6

7 Page 10, lines 13 - 23:

8 Delete all material.

AMENDMENT # 15

OFFERED IN THE HOUSE

TO: HB 316

---

Page 10, lines 18 – 23:

Delete all material and insert:

“three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction.”

#16  
AMENDMENT

RAMRAS  
for COSTO

OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 15, line 13, following "PRESERVATION":
- 2       Insert "AND RETENTION"
- 3
- 4 Page 15, line 14, following "Preservation":
- 5       Insert "and Retention"
- 6
- 7 Page 16, line 3, following "cataloging,":
- 8       Delete "and"
- 9
- 10 Page 16, line 4, following "materials":
- 11       Insert ", and return of property to owners"
- 12
- 13 Page 16, line 9:
- 14       Delete the first occurrence of "and"
- 15       Following "materials":
- 16       Insert ", and return of property to owners"

# 17

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 316

Page 15, between lines 24 and 25:

Insert the following:

- “(9) the public defender;
- (10) a member of the Alaska Senate appointed by the President of the Senate;
- (11) a member of the Alaska House of Representatives appointed by the Speaker of the House.”

#13

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 316

1 Page 15, line 24, following "AS 24.65.020":

2 Insert ";

3 (9) the director of the Public Defender Agency;

4 (10) a representative of the ~~Alaska Innocence Project~~, *Office of Public*

5 (11) a representative of the Alaska Native Justice Center" *Advocacy*

6

7 Page 15, line 25:

8 Delete "and (6)"

9 Insert "(6), (10), and (11)"

# 19

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 16, line 3, following "cataloging,"
- 2       Insert "retention, disposal,"

AMENDMENT # 20

--- OFFERED IN THE HOUSE ---

TO: HB 316

- 1 Page 16, lines 17 - 20:
- 2 Delete all material.

AMENDMENT # 21

OFFERED IN THE HOUSE

TO: HB 316

Page 16, following line ~~28~~ 30  
Delete all material  
Insert the following:

(c)  
“~~Sec. 17~~. Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing.”

Renumber the following bill sections accordingly.

*Guenterberg*  
26-GH2812A.15  
Luckhaupt  
2/18/10

AMENDMENT #

22

--- OFFERED IN THE HOUSE

TO: HB 316

- 1 Page 16, lines 28 - 30:
- 2 Delete all material.

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
CRIMINAL DIVISION CENTRAL OFFICE

**SEAN PARNELL,**  
GOVERNOR

**Mailing:** PO Box 110300  
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January 28, 2010

Representative Jay Ramras  
Chair, House Judiciary Committee  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801

Re: House Bill 316 – relating to evidence retention  
and post-conviction DNA testing

Dear Chairman Ramras:

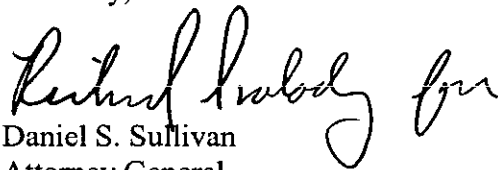
I am writing to respectfully request that you schedule House Bill 316 for a hearing in the House Judiciary Committee at your earliest convenience. HB 316 is one of several bills that the Governor has introduced to confront and help reduce crime in our state, and to provide for evidence retention and post-conviction DNA testing.

The bill adopts standards for law enforcement agencies to retain evidence. This is important for later testing of the evidence for both cold case prosecution and for people who claim they were wrongfully convicted. The bill adopts standards for post-conviction DNA testing. The bill also makes drafting and other minor changes to the DNA identification system.

Attached is a sectional analysis that explains the bill in detail.

Thank you for your consideration of this request.

Sincerely,

  
Daniel S. Sullivan  
Attorney General

DSS:ADC: sf

**HOUSE BILL 316**  
**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 will 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), 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 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 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;

- 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 applicants trial lawyer stating the reason the DNA testing was not requested at the trial level, or a 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;
    - The evidence was obtained as part of an investigation of the crime;
    - Either
      - The evidence has not been tested or the right to test the evidence was not waived for tactical reasons; or
      - The evidence has been previously tested, the applicant is requesting a more probative test, and the applicant did not waive for tactical reasons a similarly probative test;
    - 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 conclusively 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 filed an application within three years after conviction is timely. There is a presumption that an application filed later is untimely; this may be rebutted by a finding that the applicant was incompetent or for any other good reason.
- **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.

**Sections 14 and 15** note the effect the bill has on Rule 35.1, Alaska Rules of Criminal Procedure.

**Section 16** 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, and the victims' advocate.

The task force's work would be to recommend standards for collection, storage, organization, cataloging, and retrieval of evidence; identify sources of financial help for implementing the standards; 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 17 – 19** include applicability and effective date provisions.

## Analysis of HB 316

Here is the initial analysis of HB 316 and the concerns with the bill. Citations are to the pages in the printed bill and to the section or subsection within which the language appears. Their order reflects the order in which the sections appears in the bill, and not a measure of the degree of concern with the contents.

p.2 "Sec. 12.36.200(a)(1)" this section sets deadlines for destruction of evidence rather than allow the Task Force which is established at the end of the bill to study the issue and make recommendations---When SB110 was drafted one of the reasons for establishing the Task Force was to allow for informed creation of destruction deadlines.

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.

p.3 (d) at bottom of page. See also p.11, last line. This section calls for the person who requests evidence that has been preserved to pay for its retrieval. There is not one single statute passed by any other state or the federal government that even imagines such a requirement. An irony in including this section is that it follows a section which requires the agency holding the evidence to produce an inventory of the evidence. It must be presumed that the agency will actually confirm they have each of the items on the inventory before providing it. After physically confirming they have each piece of evidence they then get to turn around and charge for going back again and collecting it. Seems a reasonable solution would be to put it in a convenient place at the time of preparing the inventory.---The concern is that an individual 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, and charging a person claiming innocence to collect the evidence passes a different message.

p.7 "Sec 5 AS 12.72.030" This section requires that an individual plead a prima facie case for relief and a court must find that a prima facie case for relief exists before any discovery related to the application can be pursued. This section hobbles claims for relief since discovery is often necessary to obtain facts which will establish a prima facie claim for relief. This requirement is materially more restrictive than the current procedure which only requires an individual plead material facts to go forward. This section will often create a catch 22 making claims for relief impossible.

p. 8 (C) at the top and (3) at the bottom. This makes post-conviction testing unavailable to anyone who admits or concedes guilt in any official proceeding or whose statement of guilt was the basis for the conviction. This section flat out

denies the real world fact that 25% of the known DNA exonerations involved an innocent individual who admitted or pled guilty to the crime. This category of wrongfully convicted are largely represented by the most vulnerable in society; young people, people with mental disabilities, those most susceptible to suggestion. Rather than protecting the vulnerable this section takes advantage of them. A section such as this is a clear demonstration that form is more important than justice in this bill.

p.8(4), in the middle of the page, allows a tactical mistake by a lawyer that results in an innocent individual being convicted be a bar to a later action proving that person's innocence. An innocent person in prison means the perpetrator is still at large and means the people of the state of Alaska are paying to house an innocent person. This system allows an innocent person who was convicted by their attorney's mistake no recourse to obtain testing of exculpatory evidence.

p.9, (5) at the top of the page, 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 applicants lawyer did not test for tactical reasons. This section again denies the reality of the real world that bad lawyering is one of the most common causes of wrongful convictions. Since we are talking claims of actual innocence, it would be improper to deny an individual the opportunity to test scientific evidence to establish innocence because a trial lawyer made a bad decision, or couldn't afford a test. This problem is compounded by allowing the trial lawyer to cover their mistake by requiring an affidavit from the lawyer explaining their actions on p. 8. In our system of justice, innocence should not be able to be waived.

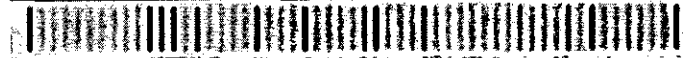
p.9, (10) calls for the court to guess at the outcome of the requested testing based on its view of other evidence. Other states and the federal government, when dealing with this part of the process, provide a standard that, assuming a result favorable to the petitioner, there would be a reasonable probability that the petitioner would not have been convicted. The later standard does not require a judge to try and guess what result the requested DNA testing would produce, but rather whether a favorable result would be significant in the outcome of the case.

p.10, "Sec. 12.73.040 Timeliness" This section basically puts a three year statute of limitations on innocence. It is significant to know that few if any of the people who have been exonerated by DNA evidence in the U.S. to date would have been released from custody or from death row under such a time requirement. This section would make post-conviction DNA testing claims in Alaska more difficult to bring then under the current process where no specific time periods are set. Establishing that an incarcerated individual is actually innocent of the crime for which they have been convicted should not be limited by arbitrary time requirements.

p. 15 "Task Force" This section establishes a task force to recommend standards and protocols regarding evidence preservation issues. Unlike a similar section in SB110, this version excludes any representative from the criminal defense bar, like the public defender or office of public advocacy, or any member from the innocence community, like from the innocence project, Or any member from the legislature. The task force established by this section is not interested in obtaining a wide range of information to produce a balanced report to provide the best information from which to make decisions, but rather to produce a document that merely puts forward a position of one part of the legal community.

This legislation is also noticeably incomplete as it does not deal at all with what procedure should be followed after testing is completed. For instance, this bill does not provide a process for what happens when testing apparently excludes the petitioner as the source of the DNA.

# INNOCENCE PROJECT



Benjamin N. Cardozo School of Law, Yeshiva University

**WRITTEN TESTIMONY OF REBECCA BROWN  
POLICY ADVOCATE, INNOCENCE PROJECT  
BEFORE THE ALASKA HOUSE JUDICIARY COMMITTEE  
RE: HB 316 – AN ACT RELATING TO POST-CONVICTION DNA TESTING  
FEBRUARY 5, 2010**

Thank you for the opportunity to speak before you today and submit written comments for your consideration of HB 316, which seeks to create statutory access to post-conviction DNA testing.

The Innocence Project assists persons in proving their innocence through post-conviction DNA testing. To date there have been 250 men and women exonerated by post-conviction DNA testing nationwide, one exonerated just yesterday. The emergence of forensic DNA technology changed the fabric of the criminal justice system. Whereas prior to the advent of forensic DNA there were few clear ways to assess prisoners' claims of wrongful conviction, DNA testing of crime scene evidence can provide the criminal justice system with significant and enduring proof of innocence or guilt, from the initial stages of an investigation to years after a conviction. With the ability to transcend fallible human judgment, DNA testing – and particularly post-conviction DNA exonerations – have proven the potential for error that exists in our criminal justice system, and that our appeals processes are not sufficient for identifying those errors.

Our policy agenda is a pro-law enforcement agenda, win-win reforms that protect the innocent and help identify the guilty. It is precisely because of the dual nature of our work – both the efforts to exonerate the innocent and the constructive efforts to strengthen the capacity of the criminal justice system to make more accurate guilt/innocence determinations – that we may be able to provide a somewhat unique and hopefully helpful perspective on the complicated issue you are addressing today.

Having worked in this field for thirty years, the co-founders of our organization often remark that perhaps the most significant lesson they have learned is that in matters of crime and justice humility is important because even the most experienced among us are often wrong. They have reviewed hundreds of cases. In most, they have pored over reams of court transcripts, scrutinized piles of police reports, dissected crime lab analyses, sifted through evidence and property logs, and studied scores of witness statements, and have strongly suspected some men's guilt, only later to discover they were wrong. No less often, someone they strongly suspect is innocent turns out to be guilty. Indeed, because every one of us is human and all of us are actors in a fact-finding mission, if just one of us makes an error, jumps to a conclusion, or acts on a false assumption, an innocent man can be condemned to a guilty man's fate.

Congress recognized DNA's potential for justice, and it was bi-partisan support that led to passage of the Innocence Protection Act contained in the Justice for All Act of 2004. Then-President George W. Bush noted in his 2005 State of the Union address: "In America we must make doubly sure no person is held to account for a crime he or she did not commit. So we are dramatically expanding the use of DNA evidence to prevent wrongful conviction."

The preservation of biological evidence and access to post-conviction DNA testing – fundamental elements of the IPA's innocence protections – are as important today as ever. The Innocence Project

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continues to unearth cases where post-conviction DNA testing proves the innocence of those convicted in both the relatively recent and distant past.

Unfortunately, when forensic DNA testing was first made available, it provided little help to the truly innocent who were facing charges like rape or murder, or who had been previously convicted. For these men and women, hope existed only later, with the potential of the performance of DNA testing on the crime scene evidence connected to their cases. For many, if not most of them, such testing represented a last chance to prove their innocence, as they had already exhausted all available state remedies, as well as federal habeas corpus relief. Yet without the benefit of state statutes providing access to post-conviction DNA testing, they faced daunting, if not unattainable, paths to such testing.

The scales of justice began to tilt when states started to pass laws allowing convicted persons access to post-conviction DNA testing. These laws not only allowed DNA testing to be performed on genetic material that was never tested at trial; it also allowed more modern, sophisticated technology to be utilized on previously tested evidence that had yielded inexact or unreliable conclusions.

Over time, newer DNA technologies have emerged, enabling us to create perpetrator DNA profiles from physical evidence that was previously useless. The amount of evidence items that are being successfully tested now, but could never have been tested successfully only a few years ago, is enormous. As DNA testing methods continue to emerge, they reveal new information about even those crimes committed in the distant past. Post-conviction DNA testing statutes have begun to contemplate these technological advances and many now include provisions that permit additional testing in cases where previous testing using older testing methods could not produce conclusive results.

The passage of post-conviction DNA testing statutes also explicitly exempted DNA testing motions and related proceedings from the procedural bars that govern other forms of post-conviction relief. Before the emergence of this discrete statutory avenue that allowed petitioners to seek post-conviction DNA testing, the innocent were forced to rely upon processes that put the burden on the petitioner to effectively solve the crime and prove that the DNA evidence promises to implicate another individual. In states without post-conviction DNA testing laws, many efforts to achieve testing were stymied, egregiously delayed or flatly denied.

Consider the following case of justice denied in the absence of a post-conviction DNA testing law. In March of 1989, New Jerseyan Larry Peterson was convicted of the sexual assault and murder of a woman in Burlington County. Although three men originally indicated to police that they were with Mr. Peterson at the time the murder took place, they later changed their accounts during interrogations and told law enforcement that Mr. Peterson confessed to them that he had indeed committed the crime. One forensic scientist testified at trial that her hair comparison analysis tied Mr. Peterson to the murder and another analyst with the New Jersey State Police testified that there was seminal fluid on the victim's jeans and sperm on her underwear. No seminal fluid or sperm was found in her rape kit. All tests on these items of evidence were inconclusive at the time of trial.

Mr. Peterson testified in his own defense at trial. Alibi witnesses supported his whereabouts during the time of the crime. Work records also showed that he did not work on the day that the victim was found – the day he supposedly confessed to the crime on his way to work. The jury convicted Mr.

Peterson of felony murder and aggravated sexual assault in March 1989. He was sentenced to life plus twenty years in prison.

Although there was no post-conviction DNA testing law in New Jersey, Mr. Peterson first sought access to DNA testing in 1994 under the state's existing post-conviction review process. When the court finally heard his motion in 1998, it denied his petition. In 2000, the Appellate Division affirmed the denial of his petition for post-conviction relief ruling that there was overwhelming evidence of guilt in his case. In March of 2001, the Supreme Court denied his Petition for Certification.

Mr. Peterson was without hope until New Jersey passed a statute granting access to post-conviction DNA testing. The law was made effective on July 7, 2002. On July 8, 2002, Larry Peterson became the first New Jerseyan to file a petition for post-conviction DNA testing under the new law and ultimately testing was granted, after an appeal of an initial denial.

In February of 2005, the Serological Research Institute (SERI) reported the results of testing: Mr. Peterson was excluded as a contributor of any and all of the biological evidence. Although the New Jersey State Police Laboratory had reported that there was no semen in the victim's rape kit, SERI identified sperm on her oral, vaginal, and anal swabs. Two different male profiles were found. One of the males was one of the victim's consensual partners, and his profile was also found on her underwear, jeans, and rape kit. The other unknown male was found on all of the swabs in her rape kit. Based on this evidence, Mr. Peterson's conviction was vacated in July 2005. On May 26, 2006, the prosecution decided to drop all charges against Mr. Peterson. Without the passage of New Jersey's post-conviction DNA testing law, Mr. Peterson would have perished in prison.

Today, 47 states have post-conviction DNA testing laws, which vary in substance and scope. In some states with laws, the "right" to DNA testing remains illusory for many categories of potentially innocent defendants. *That said, the proposal under consideration in HB 316 more affirmatively denies post-conviction testing than any other statute we have ever seen.*

We offer this perspective based on our breadth of experience litigating claims of innocence all across the nation. We have worked closely with legislatures around the country to establish meaningful post-conviction DNA access, most recently in South Carolina, Mississippi and Nevada, which chose last year to expand its statute to additional categories of deserving applicants. We have learned that seemingly innocuous provisions can spell a dead end for justice for many deserving applicants and wish to spare Alaska such a fate. While there are many provisions that create barriers to meaningful access to post-conviction DNA testing in this proposal, in the interest of time, I will focus on the most problematic areas.

#### ***Timeliness***

Perhaps the most restrictive provision in this proposal can be found in Section 12.73.040, which effectively puts a three year statute of limitations from the time of conviction on filing a post-conviction claim of innocence. As I mentioned earlier, nearly every single individual who was able to prove innocence through post-conviction DNA testing had already exhausted all available state remedies, as well as federal habeas corpus relief before seeking testing. Not one of these individuals would be eligible for testing under the framework contemplated in this proposal. *There is not one law in the*

*nation that includes such a restrictive timeliness provision. Indeed, 35 of 47 statutes possess no time limitation on the filing of a post-conviction DNA testing petition whatsoever. Perhaps more concerning, the inclusion of such a provision in a post-conviction testing law would make claims more difficult to bring than under the current post-conviction review process.*

***Barring Testing to Individuals Whose Attorneys Did Not Previously Seek Testing***

Traditionally, a defendant seeking post-conviction DNA testing might be able to accomplish such testing under the post-conviction relief process. Unfortunately, though, that framework has proven illusory, given the fact that not a single Alaskan has achieved post-conviction DNA testing to date. If properly structured, a post-conviction DNA testing framework would correct this and allow an Alaskan access to testing under such a framework. Unfortunately, however, the framework proposed also effectively blocks access to post-conviction DNA testing.

A provision inserted into the existing post-conviction review law, located in Section 12.72.010(4), indicates that if an individual seeks post-conviction DNA testing to support his claim of innocence, the person's "exclusive method for obtaining that testing is an application under the post-conviction DNA testing statute," yet Section 12.73.020(5)(A), a provision in the proposed, new post-conviction DNA testing framework, bars an individual from seeking post-conviction DNA testing if the evidence "was not subjected to DNA testing, and the applicant did not waive, or the applicant's lawyer did not forego for tactical reasons, the right to request DNA testing." This provision is made worse by the requirement, in Section 12.73.010(4), which requires an affidavit by the applicant's lawyer stipulating to the reasons DNA testing was *not* sought before or during trial.

These sections effectively bar innocent individuals who were victimized by poor representation, a common cause of wrongful conviction, from post-conviction DNA testing. Put simply, this proposal requires an individual seeking DNA testing to abandon the post-conviction relief process for the purposes of accessing post-conviction DNA testing in favor of the newly created avenue for post-conviction DNA testing. Once the defendant seeks DNA testing under the post-conviction DNA testing framework, however, which is his "exclusive method for obtaining that testing," he is at the mercy of his trial attorney to disclose potential incompetence in order to be granted that post-conviction DNA testing. Therefore, he must rely upon his trial attorney, the same trial attorney who ineffectively represented him, to admit to his negligence or indolence to obtain access to post-conviction DNA testing under the post-conviction DNA testing framework.

It is improper to deny an individual the opportunity to test scientific evidence to establish innocence because a trial lawyer failed to explore DNA testing, made a poor decision, or could not afford a test. It is difficult to conceive that the same trial attorney who made a poor decision would be willing provide an affidavit to this effect. ***Put simply, these provisions deny the most vulnerable – those who were represented poorly or ineffectively – the ability of proving innocence through DNA testing.***

***Barring Individuals Who Admitted Guilt***

There are three areas of the proposal that would foreclose the possibility of post-conviction DNA testing to an individual who admitted or conceded guilt to the crime for which he was convicted. Section 12.73.010(b)(1)(C); 12.73.020(3); and 12.73.020(9). While it is counterintuitive to most, the innocent, with great regularity, plead guilty, falsely confess and otherwise provide admissions to

crimes they did not commit.

Researchers who study this phenomenon have determined that the following factors contribute to or cause such admissions or false confessions:

- Real or perceived intimidation of the suspect by law enforcement
- Use of force by law enforcement during the interrogation, or perceived threat of force
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited education
- Devious interrogation techniques, such as untrue statements about the presence of incriminating evidence
- Fear, on the part of the suspect, that failure to confess will yield a harsher punishment

Some populations, including youth and individuals with mental limitations, are particularly vulnerable, but we have uncovered many cases that involve individuals who do not fall into these “at risk” categories. *Nearly 25% of the nation’s wrongful convictions proven through DNA testing reveal involved an admission or confession.* The proposal currently under consideration would have barred all of these people from seeking testing.

***Requiring Courts to Anticipate the Outcome of Testing***

Section 12.73.020(10) requires the court to assess whether there is a reasonable probability, in light of all available evidence, including even evidence that was not introduced at trial, that the requested DNA testing would demonstrate innocence. In essence, this provision would allow the courts to guess the outcome of testing rather than to just accomplish that requested testing. We have learned in the course of our work, that only DNA can provide definitive answers about guilt or innocence. Time and again, we have uncovered cases which contain multiple elements seemingly pointing to the defendant’s guilt only to learn through DNA testing that the defendant is, in fact, innocent. As I described earlier, at our office, we have reviewed cases where we were fairly confident in a defendant’s guilt only to learn later of his innocence and vice versa. Therefore, it is simply irresponsible to place such a burden on the court, and it certainly sets the stage for irreparable mistakes that any one of us, placed in that same position, would make.

***Requiring the Petitioner to Pay for the Retrieval of Evidence***

Section 12.36.200(d) of the proposal requires the defendant seeking biological evidence connected to his case to pay for its retrieval. *There is no other state in the country that places this burden on the defendant.* In light of all of the other barriers to meaningful post-conviction DNA testing contained in this proposal, this additional burden – particularly for an indigent defendant – could effectively bar deserving individuals from seeking testing.

We believe the Governor put forward this proposal in the hopes of helping the truly innocent who are languishing behind bars in the state of Alaska. Unfortunately there are many provisions in this bill



that would prevent access to post-conviction DNA testing from being meaningful. In essence, their hopes of demonstrating their innocence will be forever prohibited. Our office would appreciate the opportunity to offer our perspective to the Alaskan legislature with the goal of crafting a statute that provides meaningful access to testing in the way we believe Alaskans want.

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Thank you for the opportunity to share these views with you. I hope you will contact me if there is any additional information that I can provide on the subject.  
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# ALASKA INNOCENCE PROJECT

**WRITTEN TESTIMONY IN SUPPORT OF ORAL TESTIMONY OF  
WILLIAM B. OBERLY, EXECUTIVE DIRECTOR  
ALASKA INNOCENCE PROJECT  
BEFORE THE ALASKA HOUSE JUDICIARY COMMITTEE  
HB 316 – AN ACT RELATING TO POST-CONVICTION DNA TESTING  
JANUARY 5, 2010**

Thank you to the House Judiciary 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. 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 15 section (a) at lines 16 through 24. This section establishes a task force to recommend standards and protocols regarding evidence preservation issues. Unlike a similar section in SB110, this version excludes any representative from the criminal defense bar, like the public defender or office of public advocacy, or any member from the innocence community, like from the innocence project, or any member from the legislature. The task force established by this section would not receive a wide range of information in order to produce the most balanced report based on the best information. The task force created by this bill will be limited to information from one part of the criminal justice community and will thus produce a report that is less than complete and so will be that much less effective.

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

February 5, 2010

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.

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

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Conforming amendments	<p><b>Disposition of recovered or seized property</b></p> <p><b>Sections 1 &amp; 2</b>  <b>12.36.020 &amp; 12.36.090</b>  Clarifies that retention of evidence in this bill takes precedence over existing provisions that address disposition of evidence in various circumstances</p>		
Crimes covered under the retention requirements	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b>  <b>AS 12:36:200(a)(1)</b>  Homicide; sexual assault in first and second degree</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1:</b>  <b>AS 12:36:200(a)(1)</b>  Same</p>	
Retention time for evidence (other than biological material)	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b>  <b>AS 12.36.200(a)(1)</b>  <b>(A)</b> 18 months after conviction of a crime  <b>(B)</b> If appealed, one year after final judgment by conclusion of direct review  <b>(C)</b> If a timely application of post-conviction relief is filed under <b>(A)</b> &amp; <b>(B)</b>, the date that a judgment dismissing or denying the application becomes final</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b>  <b>AS 12:36.200(a)(1)</b>  For the period of time that the crime remains unsolved</p>	
Retention of biological material or evidence	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b>  <b>AS 12:36:200(a)(2)</b>  Until a person is unconditionally discharged for crime; or until the retention periods for physical evidence expires, whichever is longer</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b>  <b>AS 12.36.200(a)(2)</b>  While the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b>  <b>AS 12.72.220(d)</b>  For the period of time that person is incarcerated in connection with the case</p>

Compiled by the Offices of Rep. Lynn and Rep. Ramras

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Disposal of evidence that is that is of a size, bulk, quantity , or physical character that makes preservation impractical or hazardous	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b> <b>AS 12.36.200(b)</b> Agencies retain samples of evidence through written policies on removal and preservation of samples</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b> <b>AS 12.36.200(b)</b> Similar, but does not include the word, "hazardous"</p>	
Requesting an inventory of the evidence and biological material that has been preserved	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b> <b>AS 12.36.200(c)&amp;(d)</b> Upon the written request of a person convicted of a crime, an agency shall provide an inventory of evidence preserved in connection with the person's conviction. The person shall pay reasonable costs incurred in the retrieval of evidence</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b> <b>AS 12.36.200(c)&amp;(d)</b> Upon the written request of a convicted prisoner or registered sex offender, an agency shall prepare an inventory of evidence preserved in connection with the person's criminal case.</p>	
Procedure for disposal of evidence or biological material before expiration of time period for preservation	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b> <b>AS 12.36.200(e)</b> Allowed after notice to the parties and attorneys, if no party objects. If there is an objection, the agency can make a request to the court to allow disposal</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b> <b>AS 12.36.200(d)</b> Similar, but also includes notice to the Public Defender Agency</p>	
Remedies if evidence is destroyed in violation of this section	<p><b>Preservation of Evidence</b></p> <p><b>Section 3</b> <b>AS 12.36.200(h)</b> The court may order the remedy it determines appropriate. However, the court may not reverse or vacate a conviction</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b> <b>AS 12.36.200(g)</b> The court may order the remedy it determines appropriate.</p>	<p><b>Preservation of Evidence</b></p> <p><b>Section 1</b> <b>AS 12.72.220(a)</b> Applicant is not entitled to relief on an allegation that a law enforcement agency failed to preserve biological evidence</p>

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Civil immunity for failure to comply with this section	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(i)</b> A person may not bring civil action for damages for any good faith failure to comply	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(h)</b> A person may not bring civil action for damages for any unintentional failure to comply	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.72.220(c)</b> This section does not create a liability on the part of a law enforcement agency for failure to preserve evidence
Definitions	<b>Preservation of Evidence</b>  <b>Section 3</b> <b>AS 12.36.200(k)</b> Definitions include: "agency" "biological material" "DNA" "unconditionally discharged"	<b>Preservation of Evidence</b>  <b>Section 1</b> <b>AS 12.36.200(k)</b> Definitions include: "agency" "biological evidence" "DNA" "prisoner"	
A person convicted or sentenced for a crime seeking post-conviction relief by DNA testing	<b>Scope of post-conviction relief</b>  <b>Section 4</b> <b>AS 12.72.010(4)</b> The person's exclusive method for obtaining DNA testing to support a claim of innocence is an application under AS 12.73, proposed in the bill		
Who can apply for post-conviction DNA testing of evidence	<b>Application for post-conviction DNA testing</b>  <b>Section 6</b> <b>AS 12.73.010(a)</b> A person convicted of a felony under AS 11.41 who has not been unconditionally discharged		<b>Procedure for application for DNA testing; appointment of counsel</b>  <b>Section 1</b> <b>AS 12.72.200(a)</b> After conviction, an incarcerated person

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
Information that must be included in an application for post-conviction DNA testing	<p><b>Application for post-conviction DNA testing</b></p> <p><b>Section 6</b> <b>AS 12.73.010(b)</b></p> <p>(1) An affidavit that states:  <b>(A)</b> that the applicant did not commit the crime for which he was convicted or any less included offense  <b>(B)</b> 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  <b>(C)</b> that the applicant did not admit or concede guilt for the offense in any official proceeding  <b>(2)</b> An affidavit by the applicant or applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant  <b>(3)</b> An affidavit by the applicant or applicant's lawyer describing previous efforts to obtain DNA testing  <b>(4)</b> An affidavit by the applicant's lawyer stating the reason the DNA testing was not requested at the trial level, and or an affidavit stating efforts taken to obtain this affidavit</p>		<p><b>Procedure for application for DNA testing; appointment of counsel</b></p> <p><b>Section 1</b> <b>AS 12.72.200(b)</b></p> <p>(1) The results of all prior DNA tests, regardless of whether a test was performed by the defense or the prosecution  <b>(2)</b> An affidavit sworn to by the applicant:  <b>(A)</b> describing all prior efforts to obtain DNA testing  <b>(B)</b> describing any prior application filed under this section  <b>(C)</b> stating that the applicant is innocent of the crimes for which the applicant was convicted and any lesser included offense  <b>(3)</b> An affidavit from trial counsel stating the reasons DNA testing, or more discriminating DNA testing, was not sought before trial, or a statement by the applicant explaining why the affidavit was not obtained</p>
If the court determines the applicant is indigent	<p><b>Application for post-conviction DNA testing</b></p> <p><b>Section 6</b> <b>AS 12.73.010(d)</b></p> <p>Filing fees must be paid under the provisions of AS 09.19 and counsel shall be appointed under the provisions of AS 18.85.100</p>		<p><b>Procedure for application for DNA testing; appointment of counsel</b></p> <p><b>Section 1</b> <b>AS 12.72.200(d)</b></p> <p>The court shall appoint the public defender or the office of public advocacy</p>
Representation of an indigent person	<p><b>Right to representation, services and facilities</b></p>		

Compiled by the Offices of Rep. Lynn and Rep. Ramras

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
	<p><b>Sec 7</b>  <b>AS 18.85.100(g)</b>  An indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing</p>		
Findings and/or standards for when a court may order post-conviction DNA testing	<p><b>Findings required for post-conviction DNA testing orders</b></p> <p><b>Section 6</b>  <b>AS 12.73.020</b>  The court shall order post-conviction DNA testing if:</p> <p><b>(1)</b> The applicant was convicted of a felony under AS 11.41</p> <p><b>(2)</b> Completion of the affidavits required by AS 12.73.010 have been submitted</p> <p><b>(3)</b> The applicant has not admitted or conceded guilt in an official proceeding</p> <p><b>(4)</b> the evidence was obtained as part of an investigation of the crime</p> <p><b>(5)</b> Either:</p> <p><b>(A)</b> The evidence has not been tested or the right to test the evidence was not waived for tactical reasons; or</p> <p><b>(B)</b> the evidence has been previously tested, the applicant is requesting a more probative test, and the applicant did not waive for tactical reasons a similarly probative test</p> <p><b>(6)</b> 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</p>		<p><b>Standards for DNA testing</b></p> <p><b>Section 1</b>  <b>AS 12.72.210</b>  A court may not order DNA testing unless the applicant shows:</p> <p><b>(1)</b> by clear and convincing evidence, that the results of the DNA testing could establish a reasonable doubt as to the applicant's guilt of the crime for which the applicant was convicted</p> <p><b>(2)</b> that there is reason to believe that a law enforcement agency collected biological evidence pertaining to the offense and retains actual or constructive possession of the evidence that allows for DNA testing</p> <p><b>(3)</b> that the applicant did not secure DNA testing before the applicant's conviction because DNA testing was not reasonably available or for reasons that constitute justifiable excuse, ineffective assistance of counsel, or excusable neglect</p> <p><b>(4)</b> that the applicant consents to provide a biological sample for DNA testing</p>

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
	<p>(7) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices</p> <p>(8) The applicant proposed a defense theory not inconsistent with the defense at trial, and that would establish innocence</p> <p>(9) If the defendant was convicted at trial, the identity of the perpetrator was an issue</p> <p>(10) There is a reasonable probability that the testing required will produce new evidence that would support the new defense theory and could conclusively establish innocence</p> <p>(11) The applicant consents to give a DNA sample and to have that sample entered into the DNA identification system</p> <p>(11) The application is timely as described in AS 12.73.040</p>		
Summary dismissal by the court	<p><b>Summary dismissal and response</b></p> <p><b>Section 6</b> <b>AS 12.73.030</b> Allows for dismissal if the application does not include information required. If not dismissed, prosecuting authority has 45 days to file a response</p>		
Timeliness of an application	<p><b>Timeliness</b></p> <p><b>Section 6</b> <b>AS 12.73.040</b> There is a presumption that an application filed within three years is timely. This may be rebutted by a finding that the applicant was incompetent or for any other good reason</p>		<p><b>Results of the DNA test</b></p> <p><b>Section 1</b> <b>AS 12.72.240(a)</b> Notwithstanding any law or rule of procedure that bars an application for post-conviction relief as untimely, an applicant may use the results of a DNA test ordered under 12.72.200 as the grounds for filing a motion for post-</p>

Compiled by the Offices of Rep. Lynn and Rep. Ramras

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
			conviction review
Collection of DNA sample	<b>Testing procedures</b>  <b>Section 6</b> <b>AS 12.73.050(a)</b> Samples taken from the applicant or a prisoner must be collected at a law enforcement or correctional facility.		<b>Testing; payment</b>  <b>Section 1</b> <b>AS 12.72.230(a)</b> Samples shall be collected at a law enforcement or correctional facility
Testing of DNA sample	<b>Testing procedures</b>  <b>Section 6</b> <b>AS 12.73.050(c)</b> DNA testing shall be performed at a laboratory operated or approved by the Department of Public Safety		<b>Testing; payment</b>  <b>Section 1</b> <b>AS 12.72.230(a)</b> DNA samples shall be tested at a laboratory operated or approved by the Department of Public Safety.
Costs of DNA testing	<b>Testing procedures</b>  <b>Section 6</b> <b>AS 12.73.050(c)</b> DNA testing ordered under this section shall be performed at state expense. The applicant shall pay the reasonable costs incurred in the retrieval from storage of material to be tested.		<b>Testing; payment</b>  <b>Section 1</b> <b>AS 12.72.230(a)</b> The applicant shall pay the costs of the collection and testing of the sample. If indigent and represented by court-appointed counsel, with approval of counsel, the costs of testing shall be paid by the Public Defender Agency of the office of public advocacy

	<b>HB 316 Governor</b>	<b>SB 110 French</b>	<b>HB 174 Lynn</b>
DNA testing allowed without following the procedures in this bill	<p><b>Post-conviction testing by stipulation</b></p> <p><b>Section 6</b> <b>AS 12.73.060</b> The prosecution and an applicant may stipulate to DNA testing without the person filing an application under this chapter</p>		
Definitions for post-conviction DNA testing procedures	<p><b>Definitions</b></p> <p><b>Section 6</b> <b>AS 12.73.900</b> Definitions include: "DNA" "innocence" or "innocent" "prisoner" "unconditionally discharged"</p>		<p><b>Definitions</b></p> <p><b>Section 1</b> <b>AS 12.72.250</b> Definitions include: "actual or constructive possession" "DNA" "incarcerated"</p>
Disposal of DNA for person not guilty	<p><b>DNA identification system</b></p> <p><b>Section 9&amp;10</b> <b>AS 44.41.035(g)&amp;(i)</b> Allows person to request disposal of DNA samples if not guilty of offense for which arrested and not convicted of another offense requiring DNA samples</p>	<p><b>DNA identification system</b></p> <p><b>Section 2&amp;3</b> <b>AS 44.41.035(g)&amp;(i)</b> Same</p>	
Creation and Repeal of Task Force to consider and address standards and practices for proper collection and preservation of evidence	<p><b>Uncodified Law</b></p> <p><b>Section 16&amp;18</b> Starts work no later than Dec. 31, 2012 Repealed Jan. 1, 2013</p> <p><b>Task Force members:</b> Attorney general DPS commissioner State crime cab rep. Municipal police chief Municipal police chief not on state's interconnected road system State medical examiner Court system rep. Appointed victims' advocate</p>	<p><b>Uncodified Law</b></p> <p><b>Section 5&amp;7</b> Starts work not later than Dec. 31, 2011 Repealed Jan. 1, 2012</p> <p><b>Task Force members:</b> Attorney general DPS commissioner State crime cab rep. Municipal police chief Municipal police chief not on state's interconnected road system Public defender Public advocacy director Alaska Innocence Project</p>	

Compiled by the Offices of Rep. Lynn and Rep. Ramras

# 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  
 Sponsor: Rules Committee Component: Office of the Attorney General  
 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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel	4.0		2.0					
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>4.0</b>	<b>0.0</b>	<b>2.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

	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							
<b>TOTAL</b>	<b>4.0</b>	<b>0.0</b>	<b>2.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

# 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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE (Thousands of Dollars)**

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

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: 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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

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

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: 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
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

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

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: 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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

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

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  
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 Department of Administration

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

# Star-Telegram

## Texas to discard millions of babies' blood samples

Posted Monday, Feb. 08, 2010

WASHINGTON -- A critical safety net for babies -- that heel prick of blood taken from every newborn -- is facing an ethics attack.

After those blood spots are tested for devastating diseases, some states store them for years.

Scientists consider the leftover samples a treasure, both to improve newborn screening and to study bigger questions, such as which environmental toxins can harm a fetus' developing heart.

Seldom are parents asked to consent to such research, raising privacy concerns that are shaking up one of public health's most successful programs.

Texas is poised to throw away blood samples from more than 5 million babies to settle a lawsuit from parents angry at what they call secret DNA warehousing.

Advisers to the U.S. government hope to have national recommendations by spring on how to assure that all babies still get their newborn tests while allowing parents more say in what happens next.

Newborn screening began in the 1960s, and today every baby is supposed to be tested for at least 29 rare genetic diseases.

Texas -- which will soon discard blood spots stored since 2002 rather than tracking down families for consent -- now seeks parental permission to store leftovers.

It has requests to destroy about 13,772 children's blood spots out of about 400,000 births since May, health department spokeswoman Carrie Williams says.

Looking for comments?

*Distributed by Rep. Greenberg*



Comparison of State Post Conviction DNA Laws

STATE	Who Can Apply For Testing?	Who Pays?	Preservation Required?	Fiscal Analysis of Preservation
Arizona	Convicted felons may request testing at any time	State, but court can order the petitioner to pay	Required during the pendency of the proceeding. allows court to order the state keep a sample for re-testing and requires that blood samples be preserved for 35 years	N/A
California	Incarcerated felons	State, but court can order the petitioner if able to pay	For time that offender remains incarcerated; entity has discretion to determine how to retain evidence; preservation portion of law is automatically repealed on 1/1/03	Quoted from fiscal note: "Potentially significant reimbursable local costs for evidence storage. Sheriff's offices and police departments differ in how long they store evidence, but most do not store evidence after appeals have been exhausted. By mandating storage, this bill creates annual costs that could be in the range of \$1 million. For example, if Los Angeles City and County each have to purchase refrigeration units for biological evidence and rent additional storage facilities, the annual cost could exceed \$200,000. Extrapolating statewide, the cost could reach \$1 million since individual departments maintain their own facilities."
Connecticut	All offenders seeking a new trial based on newly discovered DNA evidence	N/A	N/A	N/A
Delaware	Anyone convicted of a crime may make motion within three years after judgement is final or, if judgment was final before 9/1/00, petitioner must file by 1/1/02	State, but court can order the petitioner if able to pay	N/A	N/A
Florida	Anyone tried and convicted of a crime may petition for testing if within two years of date of final judgment or date judgment is affirmed on appeal or by 10/1/03, whichever occurs later	State, but court can order the petitioner if able to pay	For non-capital cases, two years following date of final judgment or date judgment is affirmed on appeal; for capital cases, 60 days after execution of sentence	N/A
Idaho	Anyone convicted of a crime may request testing at any time; however, in capital cases, petition must be filed within 42 days of judgment or by 7/1/01 whichever is later	Petitioner, unless unable to pay	N/A	N/A
Illinois	Anyone convicted of a crime	N/A	At least seven years	N/A
Indiana	Certain convicted felons	Court will order payment responsibility	Retain during pendency of proceeding; court can order to keep a sample for re-testing	N/A

Louisiana	Convicted felons currently in custody may request testing by 8/30/05	Creates fund for indigent petitioners	In non-capital cases, preserve until 2005; for capital cases, preserve until execution of sentence	N/A
Maine	Anyone convicted of a crime; requires prosecutor to reopen case if test indicates innocence	N/A	N/A	N/A
Maryland	Certain felons incarcerated on or after effective date	Petitioner pays unless results are favorable to petitioner	In most cases, three years after imposition of sentence	Quoted from fiscal note: "It is expected that for most or all jurisdictions, the bill would require additional storage space, including refrigeration facilities for evidence such as DNA and blood samples. The expenses that would be incurred by law enforcement agencies for the additional storage facilities required by the bill cannot be reliably estimated, but it is expected that such expenses would be significant over time."
Michigan	Incarcerated felons convicted before the effective date may request testing by 1/1/06	Petitioner, unless unable to pay	Preserve during entire incarceration period	N/A
Minnesota	Anyone convicted of a crime	N/A	N/A	N/A
Missouri	Anyone in custody of DOC	N/A	N/A	N/A
Nebraska	Anyone in custody of DOC may request testing at any time	Petitioner unless unable to pay	Preserve during entire incarceration period	N/A
New Mexico	Anyone convicted of a crime may request testing prior to 7/1/02	Court may order petitioner to pay	N/A	N/A
New York	Anyone convicted of a crime before 1/1/96	N/A	N/A	N/A
North Carolina	Anyone convicted of a crime	Petitioner, unless unable to pay	Preserve sample of evidence for entire felony incarceration period; entity has discretion in how to store evidence; law applies to evidence in possession on or after 10/1/01	N/A
Oklahoma	Incarcerated, indigent felons can seek the assistance of the DNA Forensic Testing Program until 7/1/05	Indigent felons can take advantage of DNA Forensic Testing Program	Preserve evidence or representative sample of evidence from violent felonies for incarceration period	N/A
Oregon	Incarcerated for aggravated murder. A person not presently incarcerated for aggravated murder, murder or a sex offense must file motion within 48 months of the effective date	By petitioner if not incarcerated; if incarcerated, the petitioner pays if able	N/A	N/A
Tennessee	Anyone convicted of 1 <sup>st</sup> or 2 <sup>nd</sup> degree murder, aggravated rape, rape, aggravated sexual battery or at trial judge's discretion, any other offense, may petition at any time	State or the criminal injuries compensation fund on behalf of the petitioner	Preserve during pendency of proceeding	N/A

Texas	Anyone convicted of a crime	The state, unless a private lab not under contract is used	For non-capital cases, until the offender dies, completes the sentence or is released on parole; for capital cases, until the offender is executed, dies or is released on parole	Quoted from fiscal note: "The Texas Department of Criminal Justice would have costs related to staff time needed to reproduce, distribute, and store the required information. However, TDCJ estimates that this activity will not have any significant fiscal impact on agency operations."
Utah	Convicted felon may request testing at any time	Petitioner pays unless indigent, incarcerated or results are favorable to petitioner	After petition filed, agencies must cooperate to preserve evidence	N/A
Virginia	Convicted felons may motion to get testing for newly discovered evidence; incarcerated felons who plead not guilty or for any other person sentenced to death or convicted of certain felonies no matter the plea, may petition for a writ of actual innocence	N/A	In non-capital cases, offender must motion for preservation of evidence or representative sample of evidence; evidence is preserved for 15 years after conviction; in capital cases, evidence preserved until sentence is executed	N/A
Washington	Incarcerated felons may request testing by 12/3/04	N/A	Biological evidence can not be destroyed until 2005	N/A

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Note: Illinois and North Carolina say that a "defendant" may motion for testing. Neither statute defines "defendant." For purposes of this chart, defendant means anyone convicted of a crime.

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