

SB

110

Alaska State Legislature



Senator Hollis French

Sponsor Statement Senate Bill 110 Preservation of Evidence

The American system of justice is founded on balancing the twin protections of the rights of those harmed by crimes, and the rights of the accused. Criminal convictions are guided by evidence of innocence or guilt, and no one in the criminal justice system wants innocent people to be convicted of crimes they did not commit. The availability and use of physical evidence at trials and during appeals is a critical piece of a meaningful justice system.

Modern DNA technology, coupled with today's comprehensive information and communications technologies, has exponentially increased the power of preserved evidence. Preserved evidence can solve cold cases and prove or disprove claims of innocence in ways unimaginable just a few years ago. The problem is, however, that evidence collection and preservation policies have not always kept pace with these new technologies.

Senate Bill 110 begins to address this issue by requiring that biological evidence in murder and sexual assault cases is properly retained while cases are unsolved and during the period after conviction that an offender is imprisoned or required to register as a sex offender. The bill still provides for police departments to return or dispose of evidence too large to keep after portions of the material likely to contain biological evidence have been removed and preserved. The bill provides for a notice process in cases where evidence will be destroyed, and it establishes a temporary task force to look at other issues involved in this emerging field of technology and make recommendations on standards and practices in cataloging and handling evidence.

Recently in Denver, Colorado a young man who had been convicted of murder at the age of 15 and who served over a decade in prison was released and his conviction was vacated as a result of DNA evidence that proved his innocence. And in cases closer to home, DNA was used after 13 years to identify a suspect in the murder of Bonnie Craig, a UAA student. The preservation of evidence is a vital and effective way to ensure the criminal justice system meets its goal of protecting the innocent and convicting the guilty. Join me in supporting this important bill.

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

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning Senate Bill No. 110, relating to the preservation of evidence and**
3 **to the DNA identification system.**

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

5 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
6 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
7 changes to the title of a bill, are suspended in consideration of Senate Bill No. 110, relating to
8 the preservation of evidence and to the DNA identification system.

Representative Jay Ramras
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Alaska State Legislature



House of Representatives

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To: Jerry Luckhaupt
Leg. Legal

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Number of pages including cover:

From: Jane W. Pierson

Date: April 7, 2010

Re: HCSCSSB110(JUD) 26-LS0560\M

Jerry,

Today the HJUD Committee passed out SB110 with the following three conceptual amendments:

1. P. 14, Line 27. After evidence add "return of property to owners"
2. P.3, Line 27 "agency" delete "mails a certified delivery notice of" and insert "sends by certified mail with proof of delivery"
3. P. 7 Line 31 through Page 8 line 3 Delete all material and insert "the applicant did not admit or concede guilt under oath in an official proceeding for the offense that was the basis of the conviction or a lesser included offense except that the court in the interest of justice may waive this requirement; for the purposes of this purposes of this subparagraph, the entry of a guilty or nolo contendere plea is not an admission or concession of guilt"

Please make these amendments and let's go final.

Any questions give me a call.

Thx.

Representative_Jay_Ramras@legis.state.ak.us

26-LS1644\A
Luckhaupt
4/6/10

HOUSE CONCURRENT RESOLUTION NO.
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26-LS0560\M
Luckhaupt
4/7/10

HOUSE CS FOR CS FOR SENATE BILL NO. 110(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS FRENCH, Wagoner, Dyson, Ellis, Paskvan, Menard, Wielechowski, Egan, Meyer, McGuire, Huggins, Stedman, Thomas, Stevens

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to post-conviction DNA testing, to the preservation of certain evidence,**
2 **and to the DNA identification registration system; relating to post-conviction relief**
3 **procedures; relating to representation by the public defender; amending Rule 35.1,**
4 **Alaska Rules of Criminal Procedure; and providing for an effective date."**

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

6 *** Section 1.** AS 12.36.020(a) is amended to read:

7 (a) A law enforcement agency may

8 (1) not return property in its custody to the owner or the agent of the
9 owner, except as provided in AS 12.36.200, if

10 (A) the property is in custody in connection with a children's
11 court proceeding, a criminal proceeding, or an official investigation of a crime;
12 or

13 (B) the property in custody is subject to forfeiture under the
14 laws of the

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(i) state; or

(ii) United States, and the United States has commenced forfeiture proceedings against the property or has requested the transfer of the property for the commencement of forfeiture proceedings; and

(2) with the approval of the court, transfer the property to another state or federal law enforcement agency for forfeiture proceedings by that agency; the court having jurisdiction shall grant the approval under this paragraph if the property

(A) will be retained within the jurisdiction of the court by the agency to which the property is being transferred; or

(B) is

(i) not needed as evidence; or

(ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

* Sec. 2. AS 12.36.090 is amended to read:

Sec. 12.36.090. Definitions. In AS 12.36.010 - 12.36.090 [THIS CHAPTER],

(1) "final disposition of a case" means the time when all appeals have been exhausted or the time when all appeals that could have been taken has expired;

(2) "law enforcement agency" means a public agency that performs as one of its principal functions an activity relating to crime prevention, control, or reduction or relating to the enforcement of the criminal law; "law enforcement agency" does not include a court.

* Sec. 3. AS 12.36 is amended by adding a new section to read:

Article 2. Preservation of Evidence.

Sec. 12.36.200. Preservation of evidence. (a) Notwithstanding AS 12.36.010 - 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency shall preserve

(1) all evidence that is obtained in relation to an investigation or prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for the period of time that the crime remains unsolved or 50 years whichever ends first;

(2) biological evidence in an amount and manner that is sufficient to

1 develop a DNA profile from any material contained in or included on the evidence
2 that was obtained in relation to the prosecution of a person convicted of, or
3 adjudicated a delinquent for, a crime under AS 11.41.100 - 11.41.130, a person
4 convicted of a crime after being indicted under AS 11.41.410 or 11.41.434 while the
5 person remains a prisoner in the custody of the Department of Corrections or subject
6 to registration as a sex offender, or a person adjudicated a delinquent for a crime after
7 the filing of a petition alleging a violation of AS 11.41.410 or 11.41.434 while the
8 person remains committed to a juvenile facility or subject to registration as a sex
9 offender.

10 (b) Under (a) of this section, an agency is not required to preserve physical
11 evidence of a crime that is of a size, bulk, quantity, or physical character that renders
12 preservation impracticable. When preservation of evidence of a crime is impracticable,
13 the agency shall, before returning or disposing of the evidence, remove and preserve
14 portions of the material likely to contain relevant evidence related to the crime in a
15 quantity sufficient to permit future DNA testing. In making decisions under this
16 section, an agency shall follow written policies on evidence retention.

17 (c) Upon written request of a person convicted of a crime and a prisoner,
18 adjudicated delinquent for a crime and committed, or subject to registration as a sex
19 offender, an agency shall prepare or provide an inventory of biological evidence that
20 has been preserved under (a)(2) of this section in connection with the person's criminal
21 case.

22 (d) An agency required to preserve biological evidence under (a) of this
23 section may destroy biological evidence before the expiration of the time period in
24 (a)(2) of this section if

25 (1) the agency is not required to maintain the evidence under another
26 provision of state or federal law;

27 (2) the agency mails a certified delivery of notice of intent to destroy
28 evidence to

29 (A) each person who remains a prisoner or committed or
30 subject to registration as a sex offender for the crime for which the evidence
31 was preserved under (a)(2) of this section;

- 1 (B) the attorneys of record, if known, for each person listed in
2 (A) of this paragraph;
3 (C) the Public Defender Agency;
4 (D) the district attorney responsible for prosecuting the crime;

5 and

- 6 (3) no person who is notified under (2) of this subsection, within 120
7 days after receiving the notice,

8 (A) files a motion for testing of the evidence; or

9 (B) submits a written request for continued preservation of the
10 evidence.

11 (e) Upon receipt of a request for continued preservation of biological evidence
12 under (d)(3)(B) of this section, an agency may petition the court for permission to
13 destroy the evidence. The court may grant the petition if the court finds that the
14 request is without merit or that the evidence has no significant value for biological
15 material.

16 (f) When an agency is required to produce biological evidence required to be
17 preserved under this section and the agency is unable to locate the evidence, the chief
18 evidence custodian of that agency shall submit an affidavit, executed under penalty of
19 perjury, describing the evidence that could not be located and detailing the efforts
20 taken to locate the evidence.

21 (g) If a court finds that evidence was destroyed in violation of the provisions
22 of this section, the court may order remedies the court determines to be appropriate.

23 (h) A person may not bring a civil action for damages against the state or
24 political subdivision of the state, their officers, agents, or employees, or a law
25 enforcement agency, its officers, or employees for any unintentional failure to comply
26 with the provisions of this section.

27 (i) In this section,

28 (1) "agency" means the Department of Law, the Department of Public
29 Safety, the Alaska Court System, or a municipal law enforcement agency;

30 (2) "biological evidence" means

31 (A) the contents of a sexual assault forensic examination kit;

1 (B) semen, blood, hair, saliva, skin tissue, fingernail scrapings,
2 bone, bodily fluids, or other identifiable human bodily material, collected as
3 part of a criminal investigation;

4 (C) a slide, swab, or test tube containing material described in
5 (B) of this paragraph; and

6 (D) swabs or cuttings from items that contain material
7 described in (B) of this section;

8 (3) "DNA" means deoxyribonucleic acid;

9 (4) "prisoner" has the meaning given in AS 33.30.901.

10 * **Sec. 4.** AS 12.72.010 is amended to read:

11 **Sec. 12.72.010. Scope of post-conviction relief.** A person who has been
12 convicted of, or sentenced for, a crime may institute a proceeding for post-conviction
13 relief if the person claims

14 (1) that the conviction or the sentence was in violation of the
15 Constitution of the United States or the constitution or laws of this state;

16 (2) that the court was without jurisdiction to impose sentence;

17 (3) that a prior conviction has been set aside and the prior conviction
18 was used as a statutorily required enhancement of the sentence imposed;

19 (4) that there exists evidence of material facts, not previously
20 presented and heard by the court, that requires vacation of the conviction or sentence
21 in the interest of justice; **if the person seeks post-conviction DNA testing to support**
22 **a claim under this paragraph, the person's exclusive method for obtaining that**
23 **testing is an application under AS 12.73;**

24 (5) that the person's sentence has expired, or the person's probation,
25 parole, or conditional release has been unlawfully revoked, or the person is otherwise
26 unlawfully held in custody or other restraint;

27 (6) that the conviction or sentence is otherwise subject to collateral
28 attack upon any ground or alleged error previously available under the common law,
29 statutory law, or other writ, motion, petition, proceeding, or remedy;

30 (7) that

31 (A) there has been a significant change in law, whether

1 substantive or procedural, applied in the process leading to the person's
2 conviction or sentence;

3 (B) the change in the law was not reasonably foreseeable by a
4 judge or a competent attorney;

5 (C) it is appropriate to retroactively apply the change in law
6 because the change requires observance of procedures without which the
7 likelihood of an accurate conviction is seriously diminished; and

8 (D) the failure to retroactively apply the change in law would
9 result in a fundamental miscarriage of justice, which is established by
10 demonstrating that, had the changed law been in effect at the time of the
11 applicant's trial, a reasonable trier of fact would have a reasonable doubt as to
12 the guilt of the applicant;

13 (8) that, after the imposition of sentence, the applicant seeks to
14 withdraw a plea of guilty or nolo contendere in order to correct manifest injustice
15 under the Alaska Rules of Criminal Procedure; or

16 (9) that the applicant was not afforded effective assistance of counsel
17 at trial or on direct appeal.

18 * **Sec. 5.** AS 12.72.030 is amended by adding a new subsection to read:

19 (b) A person who files an application for post-conviction relief under this
20 chapter or the Alaska Rules of Criminal Procedure may not pursue discovery related to
21 the application unless the applicant first pleads a prima facie case for relief and the
22 court finds that a prima facie case for relief has been established under this chapter or
23 the Alaska Rules of Criminal Procedure.

24 * **Sec. 6.** AS 12 is amended by adding a new chapter to read:

25 **Chapter 73. Post-Conviction DNA Testing Procedures.**

26 **Sec. 12.73.010. Application for post-conviction DNA testing.** (a) A person
27 convicted of a felony against a person under AS 11.41 who has not been
28 unconditionally discharged may apply to the superior court for an order for DNA
29 testing of evidence. The application must be filed in the court that entered the
30 judgment of conviction, and a copy shall be served on the prosecuting authority
31 responsible for obtaining the conviction.

1 (b) An application filed under (a) of this section must specifically identify the
2 evidence sought to be tested and must include facts from which the court can make the
3 findings required under AS 12.73.020. The application must also include

4 (1) an affidavit by the applicant that attests to the following:

5 (A) the applicant did not commit the offense for which the
6 applicant was convicted or a lesser included offense;

7 (B) the applicant did not solicit another person to commit, or
8 aid or abet another person in planning or committing, that offense or a lesser
9 included offense; and

10 (C) the applicant did not admit or concede guilt under oath in
11 an official proceeding for the offense that was the basis of the conviction or a
12 lesser included offense except that the court in the interest of justice may waive
13 this requirement; for the purposes of this subparagraph, the entry of a guilty or
14 nolo contendere plea is not an admission or concession of guilt;

15 (2) an affidavit by the applicant or the applicant's attorney stating the
16 results of each DNA test performed on the evidence in the prosecution that resulted in
17 the applicant's conviction;

18 (3) an affidavit by the applicant or the applicant's attorney describing
19 all previous efforts to obtain DNA testing and any previous application filed under
20 AS 12.72 of this section.

21 (c) An attorney who represents an applicant under this section shall investigate
22 and, if possible, confirm the accuracy of information provided by the applicant under
23 (b)(2) and (3) of this section.

24 (d) If an applicant is indigent, filing fees must be paid under AS 09.19, and
25 counsel shall be appointed under AS 18.85.100 to represent the applicant.

26 **Sec. 12.73.020. Findings required for post-conviction DNA testing orders.**
27 The court shall order post-conviction DNA testing of specific evidence if

28 (1) the applicant was convicted of a felony under AS 11.41;

29 (2) the applicant and, if represented, the applicant's attorney, have
30 submitted the affidavits required by AS 12.73.010(b);

31 (3) the applicant has not, in an official proceeding, admitted or

1 conceded guilt for the crime that was the basis for the conviction unless the court in
2 the interest of justice waives this requirement; for the purposes of this paragraph the
3 entry of a guilty or nolo contendere plea is not an admission or concession of guilt;

4 (4) the evidence either

5 (A) was not subjected to DNA testing; or

6 (B) was previously subjected to DNA testing, and

7 (i) the applicant is requesting DNA testing using a
8 method or technology that is substantially more probative than the
9 previous DNA testing; or

10 (ii) the court determines that granting the application is
11 in the best interest of justice;

12 (5) the evidence to be tested has been subject to a chain of custody and
13 retained under conditions that ensure that the evidence has not been substituted,
14 contaminated, or altered in any manner material to the proposed DNA testing;

15 (6) the proposed DNA testing is reasonable in scope, uses scientifically
16 sound methods, and is consistent with accepted forensic practices;

17 (7) the applicant identifies a theory of defense that

18 (A) is not inconsistent with a defense presented at trial; and

19 (B) would establish the applicant's innocence;

20 (8) the applicant was convicted after a trial and the identity of the
21 perpetrator was a disputed issue in the trial;

22 (9) the proposed DNA testing of the specific evidence may produce
23 new material evidence that would

24 (A) support the theory of defense described in (7) of this
25 section; and

26 (B) raise a reasonable probability that the applicant did not
27 commit the offense;

28 (10) the applicant consents to provide a DNA sample for purposes of
29 comparison and to entry of the results into the DNA identification registration system
30 under AS 44.41.035 and into any other law enforcement database; and

31 (11) the application is timely as described in AS 12.73.040.

1 **Sec. 12.73.030. Summary dismissal and response.** (a) If an application under
2 AS 12.73.010(a) does not set out the specific facts necessary for the court to make the
3 findings required under AS 12.73.020 or does not comply with AS 12.73.010(b), the
4 court shall deny the application without further proceedings.

5 (b) If an application filed under AS 12.73.010(a) is not denied under (a) of this
6 section, the prosecuting authority shall file a response within 45 days after service of
7 the application. The court shall conduct an evidentiary hearing to resolve any disputed
8 facts.

9 **Sec. 12.73.040. Timeliness.** In determining whether an application is timely
10 under AS 12.73.020(11), there is a presumption of

11 (1) timeliness if the application is filed before three years after the date
12 of conviction; this presumption may be rebutted if the court finds that the application
13 is based solely upon information used in a previously denied application; and

14 (2) untimeliness if the application is filed three years or more after
15 conviction; this presumption may be rebutted if the court finds good cause for filing
16 three years or more after conviction.

17 **Sec. 12.73.050. Testing procedures.** (a) If the court grants the application and
18 DNA samples for comparison purposes are required, samples taken from the applicant
19 or a prisoner must be collected at a law enforcement or correctional facility. If the
20 DNA sample is being collected from a person other than the applicant or a prisoner,
21 the sample must be taken by a law enforcement officer or other authorized person at a
22 location that is convenient for the person from whom the sample is being collected and
23 the person collecting the sample.

24 (b) The court may not order that a person other than the applicant provide a
25 DNA sample for comparison purposes unless that person is first afforded notice and an
26 opportunity to be heard by the court. The results of DNA testing of a sample provided
27 by a person other than the applicant may not be made available to the DNA
28 identification registration system under AS 44.41.035 or to any other law enforcement
29 database unless specifically ordered by the court.

30 (c) DNA testing ordered under this section shall be performed at the state's
31 expense and at a laboratory operated or approved by the Department of Public Safety.

1 If, after completion of the testing ordered under this section, an applicant requests
2 additional testing, any additional testing ordered by the court at the applicant's request
3 must be at the applicant's expense. If the court orders additional testing by another
4 laboratory at the request of the applicant, the laboratory operated or approved by the
5 Department of Public Safety shall preserve a portion of the evidence for later testing.
6 A laboratory selected by the applicant to perform testing under this section must
7 comply with the quality assurance standards for DNA adopted by the United States
8 Department of Justice and be accredited by the American Society of Crime Laboratory
9 Directors Laboratory Accreditation Board or the accepted as equivalent by the
10 Department of Public Safety.

11 (d) Except as provided in (b) of this section, the results of testing ordered
12 under this section shall be entered into the DNA identification registration system
13 under AS 44.41.035 and into any other law enforcement database available to the
14 Department of Public Safety.

15 **Sec. 12.73.060. Post-conviction testing by stipulation.** The provisions of this
16 chapter do not prohibit an applicant and the prosecuting authority from agreeing to
17 conduct post-conviction DNA testing without the person's filing an application under
18 this chapter. The parties may also stipulate to the payment of costs for the DNA
19 testing and other costs associated with the terms of the agreement.

20 **Sec. 12.73.090. Definitions.** In this chapter, unless the context requires
21 otherwise,

22 (1) "DNA" means deoxyribonucleic acid;

23 (2) "innocence" or "innocent" means that the applicant was not a
24 perpetrator of or an accomplice to the offense or lesser included offense for which the
25 applicant was convicted;

26 (3) "prisoner" has the meaning given in AS 33.30.901;

27 (4) "unconditionally discharged" means that a defendant is released
28 from all disability arising under a sentence, including probation and parole.

29 * **Sec. 7.** AS 18.85.100 is amended by adding a new subsection to read:

30 (g) An indigent person is entitled to representation under (a) and (b) of this
31 section for purposes of bringing an application for post-conviction DNA testing under

1 AS 12.73.

2 * **Sec. 8.** AS 44.41.035(b) is amended to read:

3 (b) The Department of Public Safety shall collect for inclusion into the DNA
4 identification registration system a blood sample, oral sample, or both, from (1) a
5 person convicted in this state of a crime against a person or a felony under AS 11 or
6 AS 28.35 or a law or ordinance with elements similar to a crime against a person or a
7 felony under AS 11 or AS 28.35, (2) a minor [16 YEARS OF AGE OR OLDER,]
8 adjudicated as a delinquent in this state for an act **committed when the minor was 16**
9 **years of age or older**, that would be a crime against a person or a felony under AS 11
10 or AS 28.35 if committed by an adult or for an act that would violate a law or
11 ordinance with elements similar to a crime against a person or a felony under AS 11 or
12 AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA
13 donor for use in forensic validation, forensic protocol development, quality control, or
14 population or statistical data bases, (5) a person required to register as a sex offender
15 or child kidnapper under AS 12.63, and (6) a person arrested for a crime against a
16 person or a felony under AS 11 or AS 28.35, or a law or ordinance with elements
17 similar to a crime against a person or a felony under AS 11 or AS 28.35. The
18 department also may collect for inclusion into the DNA identification registration
19 system a blood sample, oral sample, or tissue sample from crime scene evidence or
20 from unidentified human remains. The DNA identification registration system consists
21 of the blood, oral, or tissue samples drawn under this section, any DNA or other blood
22 grouping tests done on those samples, and the identification data related to the samples
23 or tests. Blood samples, oral samples, and tissue samples not subject to testing under
24 this section, and test or identification data related to those samples, may not be entered
25 into, or made a part of, the DNA identification registration system.

26 * **Sec. 9.** AS 44.41.035(g) is amended to read:

27 (g) A person **or minor** from whom a sample has been collected under this
28 section

29 (1) may inspect and obtain a copy of the identification data regarding
30 the person **or minor** contained within the DNA identification registration system; **and**

31 (2) **may request the Department of Public Safety to destroy the**

1 material in the system regarding the person or minor under the provisions
2 described in (i) of this section.

3 * Sec. 10. AS 44.41.035(i) is amended to read:

4 (i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT
5 ORDER,] destroy the material in the system relating to a person or minor on the
6 written request of the person or minor, if the request is accompanied by a
7 certified copy of a court order making the written findings required by this
8 subsection. The court shall issue an [THE] order under this subsection if the
9 person's or minor's DNA was included in the system under

10 (1) (b)(1) or (2) of this section, and the court order establishes
11 [DETERMINES] that

12 (A) the conviction or adjudication that subjected the person to
13 having a sample taken under this section was [IS] reversed; and

14 (B) the person

15 (i) was [IS] not retried, readjudicated, or convicted or
16 adjudicated for another crime that requires having a sample taken under
17 this section; or

18 (ii) after retrial, was [IS] acquitted of the crime or, after
19 readjudication for the crime, was [IS] not found to be a delinquent, and
20 was [IS] not convicted or adjudicated for another crime that requires a
21 sample under this section;

22 (2) (b)(6) of this section, and the court order establishes
23 [DETERMINES] that

24 (A) the person arrested was released without being charged;

25 [OR]

26 (B) the criminal complaint, indictment, presentment, or
27 information for the offense for which the person was arrested was dismissed,
28 and a criminal complaint, indictment, presentment, or information for an
29 offense requiring submission of a DNA sample was [IS] not refiled; or

30 (C) the person was found by the trier of fact to be not guilty
31 of the offense for which the person was arrested and was not convicted of

1 another offense requiring submission of a DNA sample under (b)(1) or (2)
2 of this section.

3 * **Sec. 11.** AS 44.41.035(k) is amended to read:

4 (k) The provisions of this section apply to a person or a minor from another
5 state that this state has accepted under any interstate corrections or probation
6 agreement or compact, regardless of whether the person or minor is confined or
7 released, if the person was convicted of or the minor was adjudicated for an offense
8 that is similar to an offense described in (b) of this section.

9 * **Sec. 12.** AS 44.41.035(o) is amended to read:

10 (o) A person or minor may not bring a civil action against the state or a
11 municipality, or their employees or agents, for actions arising out of DNA collection
12 in conformity with this section.

13 * **Sec. 13.** AS 44.41.035 is amended by adding subsections to read:

14 (r) A DNA sample collected or placed in the DNA identification registration
15 system that was taken or retained in good faith may be used as provided by law in a
16 criminal investigation. Evidence obtained from a match from a data collection system
17 may be used in a criminal prosecution or juvenile adjudication if the DNA sample was
18 taken or retained in good faith, even if the DNA sample is later removed from the
19 DNA identification registration system.

20 (s) If a sample collected under (b) of this section does not contain sufficient
21 material necessary to obtain an accurate DNA identification authorized under this
22 section, the Department of Public Safety or other agency authorized by the
23 Department of Public Safety may collect another sample.

24 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 INDIRECT COURT RULE CHANGE. AS 12.73, added by sec. 6 of this Act, has the
27 effect of amending Rule 35.1, Alaska Rules of Criminal Procedure, relating to post-conviction
28 relief procedure.

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

31 TASK FORCE ON STANDARDS AND TRAINING OF EVIDENCE

1 TECHNICIANS. (a) The Task Force on Standards and Training of Evidence Technicians is
2 created in the Department of Law. The task force consists of the following persons appointed
3 by the governor:

- 4 (1) the attorney general;
- 5 (2) the public defender;
- 6 (3) the director of the office of public advocacy;
- 7 (4) a chief of a municipal police department not on the state's interconnected
8 road system;
- 9 (5) the commissioner of public safety;
- 10 (6) a chief of a municipal police department;
- 11 (7) a representative of the Alaska Innocence Project;
- 12 (8) a representative of the Alaska Native Justice Center; and
- 13 (9) a representative of the state crime lab.

14 (b) There shall be three ex officio members of the task force as follows:

- 15 (1) a member of the House Judiciary Committee selected by the speaker of the
16 house of representatives;
- 17 (2) a member of the Senate Judiciary Committee selected by the president of
18 the senate; and
- 19 (3) the victims' advocate.

20 (c) Persons appointed under (a) of this section or identified under (b) of this section
21 may select a designee from the same agency or organization to act on the person's behalf as a
22 member of the task force.

23 (d) Not later than December 31, 2012, the task force shall

- 24 (1) devise standards regarding the proper collection, retention, and cataloging
25 of evidence, for ongoing investigations and prosecutions;
- 26 (2) recommend practices, protocols, models, and resources for the cataloging
27 and accessibility of preserved evidence.

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

30 **APPLICABILITY.** (a) AS 12.36.200, enacted by sec. 3 of this Act, applies to all
31 evidence in the possession of an agency, as defined in AS 12.36.200(i), on or after January 1,

1 2011, for evidence collected before, on, or after the effective date of this Act.

2 (b) AS 12.73, enacted by sec. 6 of this Act, applies to offenses committed before, on,
3 or after the effective date of this Act.

4 (c) Notwithstanding any other provision of law, a person whose conviction was
5 entered before July 1, 2010, has until July 1, 2020, to file a claim under AS 12.73, enacted by
6 sec. 6 of this Act, or a later date if the court finds good cause for a later filing.

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

9 **CONDITIONAL EFFECT.** AS 12.73, added by sec. 6 of this Act, takes effect only if
10 sec. 14 of this Act receives the two-thirds majority vote of each house required by art. IV, sec.
11 15, Constitution of the State of Alaska.

12 * **Sec. 18.** Section 15 of this Act is repealed January 1, 2013.

13 * **Sec. 19.** This Act takes effect July 1, 2010.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
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Alaska State Legislature



House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: April 6, 2010

Re: HJUD CS for SB110 (26-LS0560\C) and HB316(26-GH2812\R)

HB316

Jerry, As discussed, here are the last three amendments for SB110:

/ P. 1, L 10 SB 110 after "unsolved" insert an outward time limit of **50** (sorry, I told you 30 before) years, whichever comes first.

HB316

P. 8, L. 7 after "guilt" insert "under oath"

P.8, L. 9 after "offense" insert something to the effect "except that the court in the interest of justice can waive this requirement"

P. 8, L. 17-21 Delete all material

We are good to go w/ the CS!

Representative_Jay_Ramras@legis.state.ak.us

Representative Jay Ramras
Chair, Judiciary
Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
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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: **2**

From: Jane W. Pierson

Date: April 6, 2010

Re: HJUD CS for SB110 (26-LS0560\C) and HB316(26-GH2812)

Jerry, As discussed, we are going to do a CS for SB110, blending SB110 and HB316. The new bill will be SB110. However, that being said, it is easier to use HB316 as the working document.

Section 3, Delete Article 2 _ PRESERVATION OF EVIDENCE and insert - Article 2. PRESERVATION OF EVIDENCE from SB110, with two small changes:

P. 1, L 10 after "unsolved" insert an outward time limit of ^{SP} 20 years, whichever comes first.

P. 6, After L. 3, Add a representative of the Alaska Native Justice Center to the task force.

Next changes are to HB316.

P.9, L. 5-6 remove all materials

P. 9, L. 23 after "(9)" insert "if"

P. 9, L25 - 27 Delete all material
Insert

Representative_Jay_Ramras@legis.state.ak.us

Findings removed - evidence sought, obtained in part
P. 1, L. 30
P. 14, Line 2
Cost for testing
Cost for retrieval.

(10) The proposed DNA testing of the specific evidence may produce new material evidence that would;

(A) support the theory of defense referenced in paragraph (8); and

(B) raise a reasonable probability that the applicant did not commit the offense.

We need to drop all assignment of costs references for retrieval of evidence.

P. 16, L 25 Delete "2013" and insert "2020"

Issues still in the works:

P.8, L. 7-10 and P.9, L. 1-4 – Admission of guilt in an official proceeding

P. 8, L 11-13 - Affidavit of Attorney



Senator Hollis French

SB110 Preservation of Evidence Sectional Analysis

Section 1.

Section 1 creates new provisions in the criminal code for the preservation of evidence that require state agencies and municipal law enforcement agencies to preserve all evidence that relate to unsolved cases of murder and 1st degree sexual assault and 1st degree sexual abuse of a minor.

The section further requires that biological evidence in these crimes be retained while a person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender.

The section then provides that evidence that is impracticable due to size or other characteristics to retain may be destroyed after removal and preservation of portions likely to contain relevant evidence, and that evidence can be destroyed before the expiration of the time period by following a notice procedure outlined in the bill.

The section provides for the court to order remedies if evidence is destroyed in violation of this section, and protects agencies from civil immunity for unintentional failure to comply with the provisions of the section.

Finally, section one provides definitions of terms.

Sectional Analysis
Page Two

Sections 2, 3 and 4, make amendments to the disposal of DNA for persons who are not guilty of offences for which they were arrested.

Section 5 establishes a task force to address standards and practices for the proper collection and preservation of preserved evidence.

Section 6 establishes the applicability of section 1.

Section 7 provides a repeal of the task force established in Section 5.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSSB 110(FIN)
 (S) Publish Date: 3/15/10

Identifier (file name): CSSB 110(JUD) Dept. Affected: Public Safety
 Title: Preservation of Evidence RDU: Statewide Support
 Component: Laboratory Services
 Sponsor: Senator French
 Requester: Senate Finance Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Darwin Peterson
Senate Finance Committee

Phone 465-3873/465-4453
 Date/Time 3/12/10 8:30 AM

Approved by: Co-Chair Bert Stedman/Co-Chair Lyman Hoffman

Date _____

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 110(FIN)
 (S) Publish Date: 3/15/10

Identifier (file name): CSSB110-DPS-AST-03-10-10
 Title "An Act relating to the preservation of evidence."

Dept. Affected: Public Safety
 RDU Alaska State Troopers
 Component AST Detachments

Sponsor Senator French
 Requester Senate Finance

Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.36.010 by adding a new section which requires the preservation of evidence in crimes listed under AS 11.41.100 - 11.41.130. This legislation will result in additional evidence being stored for a longer period of time. It is expected that the requirements of this bill will be manageable and have no fiscal impact on the department.

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

Phone 907-247-4480
 Date/Time 03-10-10 / 4:00
 Date 3/10/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSSB 110(FIN)
 (S) Publish Date: 3/15/10

Identifier (file name): SB110CS(JUD)-LAW-CRIM-03-09-10 Dept. Affected: Law
 Title An Act relating to the preservation of evidence and to the DNA RDU Criminal
identification system. Component Criminal Justice Litigation
 Sponsor Senator French
 Requester Judiciary Component Number 2203

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Travel	2.5		0.0	0.0	0.0	0.0	0.0	0.0
Contractual	2.0		0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.5		0.0	0.0	0.0	0.0	0.0	0.0
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	5.0		0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached analysis...

Prepared by: Eileen Donahue, Division Operations Manager Phone 465-5427
 Division Administrative Services Division Date/Time 3/9/10 4:30 PM
 Approved by: Daniel S. Sullivan, Attorney General Date 3/9/2010
Department of Law

FISCAL NOTE # 6

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. CSSB 110(FIN)

ANALYSIS CONTINUATION

CSSB110(JUD) would establish requirements for the preservation or retention of certain types of evidentiary material. Since Law only maintains temporary custody and returns such material to the investigating agency there will be no fiscal impact on Law from this portion of the bill.

The bill also adopts a procedure for a person whose DNA is collected at the time the person is arrested for a felony offense but who is later acquitted of the charge to request that his or her DNA be removed from the system. It also provides that DNA included in the DNA identification registration system in good faith, even if it is later removed, may be used as provided by law in a criminal investigation.

Section 5 of the bill establishes a "Task Force on Standards and Training of Evidence Technicians" under the Department of Law and directs the Task Force to complete its work by 12/31/2011. In contemplating the creation and assignment of the Task Force to Law it is clear there will be a period of considerable staff work involved (for which Law is not seeking additional monetary support). In addition, the potential also exists for some significant out-of-pocket costs. With eleven members on the task force including the Attorney General, the Chief Justice, and members of the Legislature it seems reasonable to conclude some face-to-face meetings would be necessary. Law will minimize such costs by carrying out the extensive and detailed interagency staff work largely (if not entirely) via teleconference, videoconference, etc. Presuming all participating agencies would assume their own costs, Law would anticipate incurring travel and other associated Task Force related expenses not to exceed \$5,000.00 in FY11.

INNOCENCE PROTECTION ACT – 18 U.S.C. § 3600

18 USC 3600

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscpinz.html>).

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART II - CRIMINAL PROCEDURE
CHAPTER 228A - POST-CONVICTION DNA TESTING

§ 3600. DNA testing

(a) **In General.**— Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the “applicant”), the court that entered the judgment of conviction shall order DNA testing of specific evidence if the court finds that all of the following apply:

- (1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of—
 - (A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or
 - (B) another Federal or State offense, if—
 - (i) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and
 - (ii) in the case of a State offense—
 - (I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and
 - (II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense.
- (2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant’s assertion under paragraph (1).
- (3) The specific evidence to be tested—
 - (A) was not previously subjected to DNA testing and the applicant did not—
 - (i) knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or
 - (ii) knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or
 - (B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.
- (4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.
- (5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.
- (6) The applicant identifies a theory of defense that—
 - (A) is not inconsistent with an affirmative defense presented at trial; and
 - (B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant’s assertion under paragraph (1).
- (7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.
- (8) The proposed DNA testing of the specific evidence may produce new material evidence that would—
 - (A) support the theory of defense referenced in paragraph (6); and

Att (1)

INNOCENCE PROTECTION ACT – 18 U.S.C. § 3600

18 USC 3600

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscode.html>).

- (B) raise a reasonable probability that the applicant did not commit the offense.
- (9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.
- (10) The motion is made in a timely fashion, subject to the following conditions:
- (A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 or within 36 months of conviction, whichever comes later. Such presumption may be rebutted upon a showing—
- (i) that the applicant's motion for a DNA test is based solely upon information used in a previously denied motion; or
 - (ii) of clear and convincing evidence that the applicant's filing is done solely to cause delay or harass.
- (B) There shall be a rebuttable presumption against timeliness for any motion not satisfying subparagraph (A) above. Such presumption may be rebutted upon the court's finding—
- (i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant's motion for a DNA test;
 - (ii) the evidence to be tested is newly discovered DNA evidence;
 - (iii) that the applicant's motion is not based solely upon the applicant's own assertion of innocence and, after considering all relevant facts and circumstances surrounding the motion, a denial would result in a manifest injustice; or
 - (iv) upon good cause shown.
- (C) For purposes of this paragraph—
- (i) the term "incompetence" has the meaning as defined in section 4241 of title 18, United States Code;
 - (ii) the term "manifest" means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.
- (b) **Notice to the Government; Preservation Order; Appointment of Counsel.—**
- (1) **Notice.—** Upon the receipt of a motion filed under subsection (a), the court shall—
 - (A) notify the Government; and
 - (B) allow the Government a reasonable time period to respond to the motion.
 - (2) **Preservation order.—** To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).
 - (3) **Appointment of counsel.—** The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A (a)(2)(B).
- (c) **Testing Procedures.—**
- (1) **In general.—** The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.
 - (2) **Exception.—** Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.
 - (3) **Costs.—** The costs of any DNA testing ordered under this section shall be paid—
 - (A) by the applicant; or
 - (B) in the case of an applicant who is indigent, by the Government.
- (d) **Time Limitation in Capital Cases.—** In any case in which the applicant is sentenced to death—
- (1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

INNOCENCE PROTECTION ACT – 18 U.S.C. § 3600

18 USC 3600

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscodeprint.html>).

- (2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.
- (e) **Reporting of Test Results.—**
- (1) **In general.—** The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.
- (2) **NDIS.—** The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as “NDIS”).
- (3) **Retention of dna sample.—**
- (A) **Entry into ndis.—** If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.
- (B) **Match with other offense.—** If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.
- (C) **No match.—** If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.
- (f) **Post-Testing Procedures; Inconclusive and Inculpatory Results.—**
- (1) **Inconclusive results.—** If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.
- (2) **Inculpatory results.—** If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—
- (A) deny the applicant relief; and
- (B) on motion of the Government—
- (i) make a determination whether the applicant’s assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;
- (ii) assess against the applicant the cost of any DNA testing carried out under this section;
- (iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;
- (iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and
- (v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.
- (3) **Sentence.—** In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.
- (g) **Post-Testing Procedures; Motion for New Trial or Resentencing.—**
- (1) **In general.—** Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of

INNOCENCE PROTECTION ACT – 18 U.S.C. § 3600

18 USC 3600

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscprius.html>).

the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

(2) **Standard for granting motion for new trial or resentencing.**— The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of—

(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

(B) in the case of a motion for resentencing, another Federal or State offense, if evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

(h) **Other Laws Unaffected.**—

(1) **Post-conviction relief.**— Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

(2) **Habeas corpus.**— Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

(3) **Not a motion under section 2255.**— A motion under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the motion or any other motion is a second or successive motion under section 2255.

(Added Pub. L. 108–405, title IV, § 411(a)(1), Oct. 30, 2004, 118 Stat. 2279.)

References in Text

The date of enactment of the Innocence Protection Act of 2004, referred to in subsec. (a)(3)(A)(i), is the date of enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

Enactment of the Justice For All Act of 2004, referred to in subsec. (a)(10)(A), is the enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

Effective Date

Pub. L. 108–405, title IV, § 411(c), Oct. 30, 2004, 118 Stat. 2284, provided that: “This section [enacting this chapter and provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of enactment of this Act [Oct. 30, 2004] and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.”

Short Title of 2004 Amendment

Pub. L. 108–405, title IV, § 401, Oct. 30, 2004, 118 Stat. 2278, provided that: “This title [enacting this chapter and sections 14136e and 14163 to 14163e of Title 42, The Public Health and Welfare, amending section 2513 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and section 14136 of Title 42] may be cited as the ‘Innocence Protection Act of 2004.’”

System for Reporting Motions

Pub. L. 108–405, title IV, § 411(b), Oct. 30, 2004, 118 Stat. 2284, provided that:

“(1) **Establishment.**—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

“(2) **Operation.**—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

“(3) **Report.**—Not later than 2 years after the date of enactment of this Act [Oct. 30, 2004], the Attorney General shall submit a report to Congress that contains—

“(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this title;

INNOCENCE PROTECTION ACT – 18 U.S.C. § 3600

18 USC 3600

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscodeprint.html>).

“(B) whether DNA testing was ordered pursuant to such a motion;

“(C) whether the applicant obtained relief on the basis of DNA test results; and

“(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

“(4) Additional information.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this title, and any recommendations the Attorney General may have relating to future legislative action concerning that section.”

3386
COMPARISON OF FEDERAL INNOCENCE PROTECTION ACT TO SB 241, SEC. 6

If the evidence to be tested was not previously subjected to DNA testing, the IPA requires that the applicant did not knowingly or voluntarily waive the right to request testing after the enactment date of the IPA or knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing. § 3600(a)(3)(A).

If the evidence was previously subjected to DNA testing, the IPA requires that the testing currently sought be based on a new technology that is substantially more probative than the prior DNA testing. § 3600(a)(3)(B).

The IPA requires that the evidence to be tested must be in the government's possession, has been subject to a chain of custody, and retained under conditions that ensure the integrity of the evidence. § 3600(a)(4).

The IPA requires that the proposed testing be reasonable in scope and involves scientifically sound methods consistent with forensic practices. § 3600(a)(5).

If the evidence to be tested was not previously subjected to DNA testing, HB 241 would require that the applicant did not waive or that his lawyer did not forgo for tactical reasons the right to request DNA testing. AS 12.73.020(5)(A).

If the evidence was previously subjected to DNA testing, HB 241 would require that the testing currently sought be based on a method or technology that is substantially more probative than the prior DNA testing and that the applicant did not waive or that his lawyer did not forgo for tactical reasons the right to request DNA testing whose probative value was similar to the method to be used in the requested testing. AS 12.73.020(5)(B).

HB 241 would impose the same requirements of chain of custody and retention. AS 12.73.020(6). (HB 241 does not expressly require that the evidence be in the government's possession, but that requirement is implied by AS 12.73.020(4), which requires that the evidence to be tested must have been obtained as part of the investigation or prosecution of an offense.)

HB 241 has an identical requirement. AS 12.73.020(7).

The IPA requires the applicant to identify a theory of defense that is not inconsistent with an affirmative defense presented at trial and that would establish the applicant's actual innocence of the offense for which he seeks exoneration. § 3600(a)(6).

If the applicant was convicted after a trial, the IPA requires that the identity of the perpetrator must have been an issue at the applicant's trial. § 3600(a)(7).

The IPA requires that the requested DNA testing of the evidence "may produce new material evidence" that would support the theory of defense identified by the applicant and would "raise a reasonable probability that the applicant did not commit the offense." § 3600(a)(8).

The IPA requires that the applicant consent to provide a DNA sample for comparison purposes. § 3600(a)(9). The IPA also requires that any results of testing relating to the applicant's DNA be submitted to the National DNA Index System (NDIS). § 3600(e)(2).

HB 241 has an identical requirement. AS 12.73.020(8).

HB 241 would require that the identity of the perpetrator must have been a disputed issue at the applicant's trial. AS 12.73.020(9).

HB 241 would require that the requested DNA testing of the evidence "will produce new material evidence" that would support the theory of defense identified by the applicant and "could conclusively establish that the applicant is innocent." AS 12.73.020(10).

HB 241 would impose a similar requirement. HB 241 would require the defendant to consent to entering the results into the DNA identification registration system (AS 44.41.035) and any other law enforcement database. AS 12.73.020(11).

*Innocence Protection Act – 18 U.S.C. § 3600**HB 241, sec. 6 – AS 12.73*

The IPA requires that the request for testing be timely. § 3600(a)(10). Timeliness is determined by two rebuttable presumptions:

(1) a motion made within the later of 5 years after enactment of the IPA or 3 years after conviction is presumed to be timely; this presumption may be rebutted by showing (a) the motion is based solely on information used in a previously denied motion or (b) by clear and convincing evidence that the motion is solely for the purpose of delay or harassment;

(2) a motion filed after the above deadlines is presumed to be untimely; this presumption may be rebutted by showing (a) that the applicant is incompetent and that incompetence substantially contributed to the delay in filing, (b) the evidence to be tested is newly discovered evidence, (c) the motion is not based solely on the applicant's own assertion of innocence and, based on all relevant facts and circumstances surrounding the motion, denial of the motion would be manifestly unjust, or (d) "upon good cause shown." § 3600(a)(10).

When an applicant files a motion under the IPA, the court must notify the government, direct the government to preserve the specific evidence referred to in the motion, and may appoint a lawyer for the applicant. § 3600(b).

HB 241 would require that the request for testing be timely. AS 12.73.020(12). Timeliness would be determined by two rebuttable presumptions:

(1) an application filed within 3 years after the date of conviction would be presumed to be timely; this presumption may be rebutted by showing that the application is based solely on information used in a previously denied application;

(2) an application filed after the above deadline would be presumed to be untimely; this presumption may be rebutted by showing (a) that the applicant is incompetent and that incompetence substantially contributed to the delay in filing, or (b) "other good cause" for the delay. AS 12.73.040.

HB 241 would require an applicant to serve the application on "the prosecuting authority responsible for obtaining the conviction." AS 12.73.010(a).

*Innocence Protection Act – 18 U.S.C. § 3600**HB 241, sec. 6 – AS 12.73*

The IPA requires that any DNA testing ordered by carried out by the FBI, but the court may allow testing by another qualified laboratory so long as integrity of the evidence and reliability of the testing is ensured. The cost of testing shall be borne by the applicant, but if the applicant is indigent, the government will bear the cost. § 3600(c).

Under the IPA, if the results of the new DNA testing are inconclusive or show that the applicant was the source of the evidence, then the applicant's sample may be retained in the NDIS. § 3600(e)(3)(A).

If the results of the new DNA testing exclude the applicant as the source, but the applicant's DNA matches evidence of another offense, then the Attorney General must notify the appropriate agency and preserve the applicant's sample. § 3600(e)(3)(B).

If the results of the new DNA testing exclude the applicant as the source and there exists no match with evidence of another offense, then the applicant's sample shall be destroyed and no information may be retained in the NDIS absent some other basis for retention. § 3600(e)(3)(C).

HB 241 would require that testing by performed at a laboratory operated or approved by the Department of Public Safety and at the state's expense. A court could order additional testing at the applicant's request, but that would be at the applicant's expense. In addition, the laboratory selected by the applicant would have to satisfy national quality-assurance standards. The applicant would also have to pay any reasonable costs for retrieving the evidence from storage before testing. AS 12.73.050(c).

HB 241 would require that results of any testing of the applicant's DNA be entered in the DNA identification registration system under AS 44.41.035. While HB 241 makes no provision for destruction of samples or retention of information, AS 44.41.035(i) authorizes a court to order destruction of DNA material included in the system.

Notwithstanding any other limitations that may exist, the IPA authorizes an applicant to file a motion for new trial if the new DNA testing excluded the applicant as the source of the evidence. § 3600(g)(1). The court must grant the motion if the DNA test results, “when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of the offense for which the applicant is imprisoned. § 3600(g)(2)(A).

HB 241 does not address what would happen if new DNA testing were to exclude the applicant as the source of the evidence. However, a favorable test result would form the basis for an application for postconviction relief based on the existence of new, material facts “that requires vacation of the conviction . . . in the interest of justice,” AS 12.72.010(4).

Section 6 of SB 241 includes provisions that find no analogue in the IPA. Both the IPA and section 6 authorize postconviction DNA testing only when a court makes the specific findings set forth in the statutes. *See* § 3600(a); AS 12.73.020. Those findings implicitly establish the factual allegations an applicant must make in the motion under the IPA or the application under section 6. Section 6 goes a step further and requires an applicant to submit affidavits from (1) the applicant, attesting that he did not admit or concede guilt in any official proceeding for the offense that was the basis of the conviction or any lesser included offense, AS 12.73.010(b)(1)(C) (CSHB 316 (Jud) amended this provision by defining admission or concession of guilt to exclude the entry of a guilty or no contest plea); (2) the applicant or his lawyer, describing (a) the results of any DNA testing performed on evidence used in the prosecution and conviction of the applicant and (b) all previous efforts to obtain DNA testing and any previous application filed under AS 12.72 or AS 12.73, AS 12.73.010(b)(2), (3); and (3) the lawyer who represented the applicant in the criminal trial resulting in conviction, describing why DNA testing was not sought before or during the trial, AS 12.73.010(b)(4).

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Prison inmate charged in Bonnie Craig killing

DNA Database connects man held Outside to 1994 slaying of Anchorage teen.

By MEGAN HOLLAND
Anchorage Daily News

(05/01/07 05:39:00)

A grand jury has charged a former Anchorage man with murder in the slaying of Bonnie Craig, an 18-year-old college student who was raped and savagely beaten before she toppled over a cliff into a creek in 1994.

Kenneth Dion, now 37 and in prison in New Hampshire for a series of armed robberies, has also been charged with rape in one of the most highly publicized and emotional slayings in Anchorage in recent decades.

DNA evidence that prosecutors say links Dion to the slaying was central to the solution, according to cold-case investigators.

"It's a major step in a case that was of significance to Anchorage and a burden to the family for years," prosecutor Pat Gullufsen said.

Dion was on probation on an Anchorage robbery conviction and had been out of prison for only a few months when Bonnie was killed.

"Just to know he's already in jail and there's no way he can hurt anyone else is a relief," said Bonnie's mother, Karen Foster, reached Monday morning. She said she had been told in January that charges could be coming in the slaying of her daughter, who had been a high school wrestler and had taught swimming to junior high kids.

Troopers were able to match semen found on Bonnie with Dion through a national computer database of DNA profiles. Dion was never known to troopers and wasn't a suspect in the case until the DNA match came back in November.

"There is no doubt about this one," trooper cold-case investigator Jim Stogsdill said of the match. "There's no confusion."

Dion likely did not know Bonnie, Stogsdill said, but apparently picked her up as she walked to a bus stop on Lake Otis Parkway on the way to an early-morning class on Sept. 28, 1994, at the University of Alaska Anchorage. Her body was found that afternoon by a hiker at McHugh Creek.

FORT RICHARDSON

Dion, originally from New Hampshire, came to Alaska as a soldier and was stationed at Fort Richardson, then stayed for a couple of years after he left the military. He did not have a job at the time of Bonnie's slaying and was in and out of jail on robbery and assault charges. He was 25 years old when Bonnie was killed.

He was in jail in Alaska at the end of July 1994, two months before Bonnie's death. And he

returned to jail on a probation violation about two months after the slaying.

Troopers say Bonnie was beaten and raped before she fell off a cliff near the Seward Highway. Her body was found floating in McHugh Creek near Mile 112.

Troopers have said she died of a head injury and hypothermia.

As to how Bonnie got to McHugh Creek, 10 miles from her home, or where she was raped, or whether she was struck in the head by her killer or she injured her head in the fall off the 30-foot cliff, "we can only surmise," Stogsdill said.

The hunt for her killer mesmerized Anchorage. Family and friends posted photocopies of the doe-eyed teenager who graduated from Service High School, asking for anyone with information about her killer to call troopers. She was not the kind of young woman to get in trouble. She lived with her parents and played the violin. She didn't drink.

Clues, though, were few and far between. And as the years passed, the crime remained unsolved and a reminder to young women walking alone that a brutal rapist had not been found.

As authorities kept looking, technology advanced to better match DNA, and more people were put into a national database.

DNA from Bonnie's case was put in the national database in 2000. New Hampshire authorities entered Dion's information in November 2006. Immediately, when workers with the Alaska state crime lab were conducting their weekly routine check of the database on Nov. 9, they had a hit.

Tammy Gregory, who was married to Dion at the time Bonnie was killed, broke down crying when reached Monday afternoon in Kenai. She said Dion was in and out of jail, on drugs, and generally abusive during those years. She hasn't seen or spoken to him in a decade. She doesn't want to remember that time in her life.

But still, she said, "I would never have thought he was capable of that. I would never have thought I was associated with someone like that."

NEW HAMPSHIRE RECORD

Dion, who left Alaska around 1996, made it back to New Hampshire, where he committed a series of robberies beginning in May 2002, according to authorities there and in Alaska. One robbery was of a pharmacy. He didn't have a weapon but, using his finger, pretended to, said Tom Velardi, deputy county attorney for Strafford County, N.H.

Dion ordered the pharmacy workers to give him OxyContin, a prescription painkiller similar to heroin that has become a popular street drug. "He had very serious addiction to it," Velardi said.

After the initial DNA match in November, authorities collected new DNA from Dion, which was taken back to Anchorage and matched again, Stogsdill said.

The grand jury in Anchorage indicted Dion on one count of first-degree murder, two counts of second-degree murder and one count of first-degree sexual assault. The two counts of second-degree murder are because it could have been a situation in which Dion didn't intend to kill Bonnie, Stogsdill said.

According to the New Hampshire Department of Corrections, Dion was sentenced to 15 years in

prison in February 2003 for five robberies that occurred from spring 2002 until he was incarcerated. Dion was living in Rochester, N.H., before he went to prison. According to the department's Web site, he is eligible for parole in August 2008.

Alaska troopers and New Hampshire authorities interviewed Dion recently, but Stogsdill said he revealed little information.

"This is a long-overdue resolution to the Bonnie Craig case," Stogsdill said.

Bonnie's mother said the news of the charges is a relief, but it also opens old wounds and memories of what happened to her little girl. She said she doesn't want a trial to deepen those wounds. She hopes Dion will admit to the crime and make a deal with prosecutors. That would be easier, she said.

Alaska authorities will try to have him extradited here to face the new charges, Gullufsen said. And, if he is convicted, he will likely finish out his sentence in New Hampshire, then transfer to an Alaska prison.

Daily News reporter Megan Holland can be reached at mrholland@adn.com.

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THE DENVER POST

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Masters released from jail

By Howard Pankratz
The Denver Post
Posted: 01/22/2008 01:02:20 PM MST



Tim Masters leaves the Larimer County courtroom where he was released after serving nearly a decade of a life term in prison for the murder of Peggy Hettrick in 1987. (THE DENVER POST | CRAIG F. WALKER)

FORT COLLINS — Special prosecutors today said that DNA testing of murder victim Peggy Hettrick's clothing revealed the partial profiles of three men but that the profiles excluded Tim Masters as the source of the DNA.

Minutes after the prosecutors handed their

findings to Judge Joe Weatherby, Weatherby vacated the judgment of conviction and sentence against Masters, who was immediately released from custody on a \$200,000 personal recognizance bond.

Masters' next court date is Feb. 5, after the Larimer County district attorney assesses the status of the case.

A short time after Masters' release, longtime Colorado defense attorney David Wymore — who led the effort to free Masters for a crime Masters maintained he didn't commit — praised former employees of the Colorado Bureau of Investigation, the FBI and Fort Collins Police Department for their help in freeing Masters.

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Daily News - Miner

Man gets four years in rape of woman in Fairbanks

By [Chris Freiberg](#)

Published Tuesday, March 10, 2009

FAIRBANKS — Late in the summer of 2000, a woman who describes herself as a proud Inupiaq Eskimo was getting a ride home from a cab driver on the Steese Highway. The driver, afraid she was going to vomit in the back of the cab, made her get out of car a few blocks from her home and walk the rest of the way.

As she approached the Steese Highway bridge over the Chena River, a man attacked her, knocking her unconscious. When she awoke a few minutes later, she was in a nearby wooded area and he was on top of her, raping her. He took her shirt and covered her face with her jacket so she couldn't see him. He tried to take her jacket too, and she had to beg to get it back so she could have something to cover herself for the walk home.

After a few minutes, the attack was over. The man — or as she called him Monday, “the thing under the bridge” — left the area. She went home and reported the crime, afraid that she could run into her unknown assailant again at anytime.

“From that day on, living in this town, at anytime, I could possibly run into my rapist,” she said in court Monday, holding back tears. The News-Miner does not usually identify the victims of sexual assaults.

For more than half a decade, she waited for Fairbanks police to identify her attacker. After collecting DNA evidence from an unrelated case in 2007, they found a match. Her attacker was identified as John F. Roberts, a 26-year-old who has been in and out of jail on a variety of petty charges since he was 14 years old. Prosecutors described his juvenile record as “horrific” and said he had zero chance of rehabilitation.

On Monday, after striking a plea agreement with prosecutors, he was sentenced to serve four years in prison for raping the woman on that late August night in 2000. He also will be on probation for five years and will have to register as a sex offender. The sentence would have

been more severe, but sexual assault carried a lesser penalty in 2000 than it does today.

Roberts went to trial last year on the sexual assault charges, but a mistrial was declared after three days because of mishandled evidence.

“After the mistrial, I was advised to accept the plea agreement, which I am unhappy with to the say the least,” the woman said. “I did it because I have to save my sanity.”

“Too soon, a rapist will be walking the streets where you have the right to be safe with your children, your mothers, your aunts, your grandmothers,” she added.

Superior Court Judge Randy Olsen empathized with the woman, agreeing that the laws do not provide for adequate punishment in a case like this.

“In other cultures or in earlier times, there would be castration or (he would be) drawn and quartered, and even then people wouldn’t be satisfied,” he said.

Roberts showed no emotion as the woman, her husband and her best friend each took the stand and told the court how their lives had been affected by the rape nearly nine years ago. Roberts’ attorney offered no defense, only wishes that Roberts will turn his life around while behind bars.

Roberts apologized to the woman and her husband and said that he’s realized he has done little with his life. He said he has found religion in jail and hopes to do something to improve his circumstances when he’s released.

“Nothing I can say to you can change what I did, and for that, I’m sorry,” he said.

LEGAL SERVICES

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MEMORANDUM

April 7, 2010

SUBJECT: Differences between CSSB 284(FIN) and CSHB 409(STA)
(Work Order Nos. 26-LS1448\P and 26-LS1495\S)

TO: [REDACTED]

FROM: Alpheus Bullard *ALB*
Legislative Counsel

As a preliminary matter, please note that each bill is, itself, the best statement of its contents. This memorandum provides only an outline¹ of the substantive differences between CSSB 284(FIN) (26-LS1448\P) and CSHB 409(STA) (26-LS1495\S). This memorandum does not identify constitutional, legal, or drafting issues raised by the provisions of either bill.

15.13.030

The House bill requires the Alaska Public Offices Commission ("APOC") to make information contained in an independent expenditure report filed under AS 15.13.040(e) available to the public within 24 hours after the report has been filed with the commission. The Senate bill does not contain this requirement.

15.13.040(d)

The Senate bill contains language clarifying that every person making an independent expenditure shall make a full report of expenditures made and contributions received. The House bill is without this language.

AS 15.13.040(e)

The House bill requires an independent expenditure report filed by a person that is not an individual under AS 15.13.040(e) to be certified as correct by the treasurer or fiscal officer of the person. The House bill requires that the independent expenditure report include the nationality of each officer and director of the person (making the expenditure) and the nationality of each officer and director of a contributor (of over \$100 in the

¹ The boldfaced heading for each of the differences described in this memorandum is the bill section in which an identified difference between the bills exists. If a heading section number or subsection letter appears in "quotes," the section or subsection is not an existing section or subsection amended by the bill, but a new section or subsection proposed to be added by the bill or bills.

[REDACTED]
April 7, 2010

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aggregate in a year) to the person (making the expenditure). The Senate bill is without these requirements.

15.13.040("q")

The Senate bill contains definitions for "director" and "officer" for the purposes of AS 15.13.040(e). The House bill does not define these terms.

"15.13.052"

The Senate bill requires persons making independent expenditures in state elections to establish a political activities account, from which all funds used by the person to make independent expenditures must be drawn. No such requirement is present in the House bill.

"15.13.068"

The Senate bill contains a more complete definition of "foreign national" than that of the House bill. The Senate bill provides that the Act's provision prohibiting a foreign national from making a contribution or expenditure in connection with a state election operates only to the extent (1) that federal law prohibits a foreign national from making a contribution or expenditure in connection with a state election and (2) permitted by federal law. The House bill provides only that the provision applies to the extent permitted by federal law.

AS 15.13.084

The House bill prohibits all anonymous expenditures.

AS 15.13.090 (and added subsections)

Both the House and Senate bills amend AS 15.13.090 to require a larger quantity of information be disclaimed in communications. The requirements of each bill are different. The House bill requires a person other than a candidate, an individual, or a political party to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, (3) provide the person's principal place of business, and (4) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors, if any, during the 12-month period before the date of the communication.

The Senate bill requires all persons to identify the person's place of business, if applicable, and requires a person other than an individual or candidate to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, and (3) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors, if any, during the 12-month period before the date of the communication.

The House bill additionally provides that "[a] person other than a candidate, individual, or political party may not make a communication . . . unless the person's principal officer

[REDACTED]
April 7, 2010

Page 3

has certified to the commission in writing that the officer has reviewed the communication, and, based on the officer's knowledge, the communication is not defamatory and does not contain any defamatory statements." This provision is absent from the Senate bill.

The Senate bill contains different requirements for communication transmitted through radio or other audio media or in the audio component of another communication than what the House bill permits. The Senate bill does not require that the audio component of a communication include the address or principal of business of the person paying for the communication or of the person's largest contributors. The House bill requires this information. However, the House bill permits a person, other than an individual, paying for a communication to be named in the audio component of the communication using the person's common name.

The House bill contains a requirement that communications from a person in which a foreign government holds more than a 10 percent ownership stake identify the foreign government as a partial owner of the person. The Senate bill does not contain such a requirement.

AS 15.13.110("g")

The House bill requires independent expenditure reports to be filed with APOC within 24 hours after the expenditure has been made. The Senate bill requires that independent expenditure reports be filed within 10 days, except independent expenditures that exceed \$250 and that are made within nine days of an election must be reported within 24 hours.

15.56.014(a)

The Senate bill amends AS 15.56.014 to provide that any person, not just a "candidate, group, or individual," who knowingly prints or publishes a communication intended to influence the outcome of an election without the words "paid for by" has committed campaign misconduct in the second degree (this change could be described as a conforming change). This section is not present in the House bill.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-243.ljw

26-LS1644\A
Luckhaupt
4/6/10

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

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning Senate Bill No. 110, relating to the preservation of evidence and**
3 **to the DNA identification system.**

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

5 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
6 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
7 changes to the title of a bill, are suspended in consideration of Senate Bill No. 110, relating to
8 the preservation of evidence and to the DNA identification system.

CS FOR HOUSE BILL NO. 316(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/10/10

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to post-conviction DNA testing, to the preservation of certain evidence,**
2 **and to the DNA identification registration system; relating to post-conviction relief**
3 **procedures; relating to representation by the public defender; amending Rule 35.1,**
4 **Alaska Rules of Criminal Procedure; and providing for an effective date."**

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

6 *** Section 1.** AS 12.36.020(a) is amended to read:

7 (a) A law enforcement agency may

8 (1) not return property in its custody to the owner or the agent of the
9 owner, except as provided in AS 12.36.200, if

10 (A) the property is in custody in connection with a children's
11 court proceeding, a criminal proceeding, or an official investigation of a crime;

12 or

13 (B) the property in custody is subject to forfeiture under the
14 laws of the

- 1 (i) state; or
 2 (ii) United States, and the United States has commenced
 3 forfeiture proceedings against the property or has requested the transfer
 4 of the property for the commencement of forfeiture proceedings; and
 5 (2) with the approval of the court, transfer the property to another state
 6 or federal law enforcement agency for forfeiture proceedings by that agency; the court
 7 having jurisdiction shall grant the approval under this paragraph if the property
 8 (A) will be retained within the jurisdiction of the court by the
 9 agency to which the property is being transferred; or
 10 (B) is
 11 (i) not needed as evidence; or
 12 (ii) needed as evidence, and the property is fungible or
 13 the property's evidentiary value can otherwise be preserved without
 14 retaining the property within the jurisdiction of the court.

15 * **Sec. 2.** AS 12.36.090 is amended to read:

16 **Sec. 12.36.090. Definitions.** In AS 12.36.010 - 12.36.090 [THIS CHAPTER],

17 (1) "final disposition of a case" means the time when all appeals have
 18 been exhausted or the time when all appeals that could have been taken has expired;

19 (2) "law enforcement agency" means a public agency that performs as
 20 one of its principal functions an activity relating to crime prevention, control, or
 21 reduction or relating to the enforcement of the criminal law; "law enforcement
 22 agency" does not include a court.

23 * **Sec. 3.** AS 12.36 is amended by adding a new section to read:

24 **Article 2. Preservation of Evidence.**

25 **Sec. 12.36.200. Preservation of evidence.** (a) Except as otherwise provided in
 26 this section and notwithstanding AS 12.36.010 - 12.36.090, an agency shall preserve

27 (1) evidence that is obtained in relation to an investigation and relevant
 28 to the prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434
 29 for the following periods:

30 (A) 18 months after the entry of a judgment of conviction of
 31 the crime;

1 (B) if the conviction for the crime is appealed, one year after
2 the judgment becomes final by the conclusion of direct review; or

3 (C) if a timely application for post-conviction relief is filed
4 within the periods stated in (A) and (B) of this paragraph, the date that a
5 judgment dismissing or denying the application for post-conviction review
6 becomes final;

7 (2) biological material, contained in or found on evidence, relevant to
8 an investigation and prosecution of a person convicted of a felony under AS 11.41,
9 until the person is unconditionally discharged for the crime, until the person is no
10 longer required to register as a sex offender, or until the periods of time provided in
11 (1) of this subsection have expired, whichever is longest; biological material must be
12 preserved in an amount and manner that is sufficient to develop a DNA profile under
13 technology available at the time that the biological material is preserved.

14 (b) An agency is not required under (a) of this section to preserve physical
15 evidence that is of a size, bulk, quantity, or physical character that makes preservation
16 impractical or hazardous. If preservation of evidence is impractical or hazardous, the
17 agency shall, before returning or disposing of the evidence, remove and preserve
18 portions of the evidence likely to contain relevant evidence related to the crime in an
19 amount and manner sufficient to retain its evidentiary value and, if appropriate, to
20 permit DNA testing under technology available at the time that the biological material
21 is preserved. An agency shall develop written policies concerning the removal and
22 preservation of samples of evidence for retention under this section. The development
23 of written policies as described in this subsection is not subject to the adoption of
24 regulation provisions of AS 44.62 (Administrative Procedure Act).

25 (c) On the written request of a person convicted of a crime described in (a) of
26 this section, an agency shall provide an inventory of the evidence that has been
27 preserved under (a)(1) of this section and of the biological material that has been
28 preserved under (a)(2) of this section in connection with the person's conviction.

29 (d) The person who requests evidence that has been preserved under this
30 section shall pay reasonable costs incurred in the retrieval of the evidence from storage
31 unless the person does not have the ability to pay the costs.

