

**ALASKA LEGISLATURE**

**1338**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996**

**DIVISION OF LEGAL SERVICES**  
**LEGISLATIVE AFFAIRS AGENCY**  
**STATE OF ALASKA**

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105


**MEMORANDUM**

May 2, 1995

**SUBJECT:** SCS CSHB 197 (Res), exploration incentive credits for mining activities (Work Order No. 9-LS0642\D)

**TO:** Representative Richard Foster  
ATTN: John Walsh

**FROM:** Jack Chenoweth  
Legislative Counsel



In addition to other credits or adjustments that may be allowed to someone conducting mining activity, the measure proposes to establish an exploration incentive credit for activities on land in the state that relate to locatable and leasable minerals and to coal.

**Bill section 1.** This is the measure's principal operating section. It authorizes an exploration incentive credit for activities on or for the benefit of land in the state to determine "the existence, location, extent, or quality" of locatable or leasable minerals or coal deposit. Specifically --

-- AS 27.30.010 authorizes the exploration incentive credit; describes the activities whose expenses may qualify for the credit; sets the time limit on the activities whose expenses may qualify for the credit, couched in terms of "new mines" and in terms of "reopened mines"; and specifically identifies the parties to whom the credit may be granted;

-- AS 27.30.020 sets out the procedures to be used by a party to request the credit from the Department of Natural Resources and to secure that department's approval to take the credit; the process is set out as a two-part process under which, in order to request the credit, the commissioner of natural resources must certify expenditures for activities that qualify for the credit and, in order to secure approval to take the credit, the commissioner must review exploration data and approve or disapprove the credit's taking;

-- AS 27.30.030 explains the manner in which the credit, whose taking has been approved, may thereafter be applied; the credit may be applied, within the limits or caps set out in that section, against the person's tax liability under the Mining License Tax, AS 43.65, the Income Tax, AS 43.20, or mining production royalty; because the mining license tax and the income tax are typically computed on the basis of collective operations (rather than on a mine site specific basis), the section directs the commissioner of revenue to disallow

Representative Richard Foster

May 2, 1995

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application of the credit unless the taxpayer submits "an accounting of the person's mining operation activities for each mining operation . . . included in the tax return . . . as to which the credit is being applied," using a form prepared by the Department of Revenue;

-- AS 27.30.040 authorizes the carrying forward from one year to another of portions of the total credit that are not applied;

-- AS 27.30.050 sets a time limit on the application of the credit at 15 tax years or royalty payment periods after the credit's approval;

-- AS 27.30.060 permits a person to assign the credit to the person's successor in interest for the mining operation if that successor is a party qualified to obtain the credit under AS 27.30.010(d);

-- AS 27.30.070 authorizes the commissioner of revenue who proposes to take the credit to maintain and provide a record of the person's past use of the credits in order to ascertain whether a claim of the credit in any one year would exceed the limits set on the use of the credit;

-- AS 27.30.080 follows a similar provision of the oil and gas exploration incentive credit and is intended to hold the Alaska Permanent Fund harmless against any losses of amounts due the fund under the state constitution and by law;

-- AS 27.30.090 directs the commissioner of natural resources to keep confidential exploration activity data provided to justify the credit for a period of 36 months and establishes civil liability for wrongful disclosure of the confidential data;

-- AS 27.30.099 supplies definitions for terms used in AS 27.30.

**Bill section 2** amends the production royalty provisions of the Alaska Land Act, AS 38.05, to permit a person obligated to pay a mineral production royalty payment to claim the exploration incentive credit against the royalty payment that is due under that chapter.

**Bill section 3** amends the Alaska Net Income Tax, AS 43.20, to permit a taxpayer to claim the exploration incentive credit against the tax due under that chapter. In addition, so that the computation and application of the exploration incentive credit may be correctly determined, the bill section directs the commissioner to require the taxpayer to submit the accounting of mining operation activities form required by AS 27.30.030(b).

**Bill section 4** amends the provisions of the Mining License Tax, AS 43.65, to recognize, as an additional adjustment to computation of the tax due under that chapter, the claim of the exploration incentive credit as a credit that may be taken against that tax. In addition, so that the computation and application of the exploration incentive credit may be correctly

Representative Richard Foster

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determined, the bill section directs the commissioner to require the taxpayer to submit the accounting of mining operation activities form required by AS 27.30.030(b).

**Bill section 5** makes the proposed exploration incentive credit authorized by the measure retroactive to January 1, 1995, to cover the entirety of the current tax year but applies the credit only to activities that may qualify for the credit initiated after May 15, 1995.

**Bill section 6** gives the measure an immediate effective date.

JBC:lmb:klb

95-186.lmb



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

May 2, 1995

Honorable Rick Halford  
Honorable Steve Frank  
Co-Chairman  
Senate Finance Committee  
State Capitol  
Juneau, AK 99811

RE: Senate CS for CS for HB 197(RES), Exploration Incentives

Dear Senators Halford and Frank,

The Alaska Miners Association wishes to go on record in support of the current Senate Committee Substitute for House Bill 197 which provides financial incentives for companies and individuals to explore for and develop mineral deposits in the state. This bill that will encourage both the small prospector as well as large international mining companies to invest here in Alaska.

The general view in the international mining industry has been that Alaska is a difficult and unfriendly place to do business. HB-197 will support the on-going effort to change this perception.

Over the past several months we have worked closely with the sponsors of this bill and with the Departments of Natural Resources and Revenue to answer questions that these agencies had raised. I am pleased to report that their questions have been answered. In the case of DNR, their concerns were focused on the mechanics of how the bill would be administered and the potential impact on program receipts. Changes were made in the bill to address these issues. In the case of Revenue, their concern was with the difficulty of calculating state corporate income tax when that tax deals with all U.S. income but the credit is specific to a particular mine. Changes were also made in the bill that addressed this concern.

If an individual or company is ever able to actually take the credit, it will be due to the fact that new revenues have been generated that do not now exist. The credit is mine specific and can be taken only if a new mine is constructed and in production.

It is also important to note that only certain defined exploration expenditures will qualify for the incentive credit. Most of the costs to develop the mine, i.e., costs for environmental

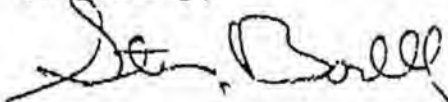
assessments or environmental impact statements, mine planning, feasibility studies, mine design, facility design, construction, etc. would not qualify for the incentive credit.

Most exploration projects will never result in an operating mine. This means that even if qualifying exploration expenditures are made and the costs are certified by the State, the credit will never be taken. As a reference, it has been estimated that for every one major mine that is developed, 1000 prospects are evaluated. I will be pleased if within the next 10 years there are two new major mines in the state that are able to utilize this investment credit.

This bill will send the message that Alaska is seeking to improve its investment climate and that Alaska wants to encourage mineral development. The bottom line for the State is that more exploration will occur and more mineral deposits will likely be discovered that can provide jobs, facilities that increase the local tax base, and ultimately company profits that can then be taxed by the state.

If we can be of any further help please contact me.

Sincerely,



Steven C. Borell, P.E.  
Executive Director

cc: Representative Foster  
Representative Vezey

**Alaska Department of Revenue  
Income and Excise Audit Division**

**HB 197 - Mineral Exploration Incentive Credit Overview**

**Example of mining operation timeline**

- Phase 1**  
 (a) Initial discovery, exploration, drilling and permitting - 8 years.  
 (b) Company incurs \$2,175,000 in costs, 80% of which are eligible for credit (credit equals \$1,740,000).
- Phase 2**  
 Construction period of 2 years. Construction costs not eligible for credit.
- Phase 3**  
 (a) Production begins in year 10 and lasts for 12 subsequent years.  
 (b) No income in first year of production, thus no credits applied for.  
 (c) Company derives income in each of the remaining 11 years of production.

**Tax Assumptions**

*(Beginning with production, except year 1.)*  
 \$100,000 in mining license tax (MLT) annually  
 \$100,000 in corporation tax annually  
 \$100,000 in royalty payments annually  
 \$300,000 total annually

Year	Exploration Credit Balance	MLT Tax Exemption	MLT Tax Credit	Corporation Tax Credit	Royalty Credit	Corp Tax Deduction Benefit <sup>1</sup>	Total Benefit
<b>100% of Expenditures Scenario</b>							
1	\$1,740,000	\$0	0	\$0	\$0	\$13,630	\$13,630
2	1,740,000	100,000	0	50,000	50,000	13,630	213,630
3	1,640,000	100,000	0	50,000	50,000	13,630	213,630
4	1,540,000	50,000	25,000	50,000	50,000	13,630	188,630
5	1,415,000	0	50,000	50,000	50,000	13,630	163,630
6	1,265,000	0	50,000	50,000	50,000	13,630	163,630
7	1,115,000	0	50,000	50,000	50,000	13,630	163,630
8	965,000	0	50,000	50,000	50,000	13,630	163,630
9	815,000	0	50,000	50,000	50,000	13,630	163,630
10	665,000	0	50,000	50,000	50,000	13,630	163,630
11	515,000	0	50,000	50,000	50,000	13,630	163,630
12	365,000	0	50,000	50,000	50,000	13,630	163,630
<b>Total</b>		<b>\$250,000</b>	<b>\$425,000</b>	<b>\$550,000</b>	<b>\$550,000</b>	<b>\$163,560</b>	<b>\$1,938,560</b>

Result: Assuming a combined tax and royalty liability of \$3,600,000 over a 12-year period, the \$1.7 million in tax credits proposed by legislation when combined with existing exemption and deduction allowances would provide a total tax benefit of \$1,938,000.

**50% of Expenditures Scenario**

1	\$870,000	\$0	0	\$0	\$0	\$13,630	\$13,630
2	870,000	100,000	0	50,000	50,000	13,630	213,630
3	770,000	100,000	0	50,000	50,000	13,630	213,630
4	670,000	50,000	25,000	50,000	50,000	13,630	188,630
5	545,000	0	50,000	50,000	50,000	13,630	163,630
6	395,000	0	50,000	50,000	50,000	13,630	163,630
7	245,000	0	50,000	50,000	50,000	13,630	163,630
8	95,000	0	50,000	45,000	0	13,630	108,630
9	0	0	0	0	0	13,630	13,630
10	0	0	0	0	0	13,630	13,630
11	0	0	0	0	0	13,630	13,630
12	0	0	0	0	0	13,630	13,630
<b>Total</b>		<b>\$250,000</b>	<b>\$225,000</b>	<b>\$345,000</b>	<b>\$300,000</b>	<b>\$163,560</b>	<b>\$1,283,560</b>

Result: By limiting the tax credit to 50% of expenditures, the total tax benefit of \$870,000 derived from expenditures coupled with already existing exemptions and deductions still yield a benefit of \$1,283,000.

<sup>1</sup> Assumes deduction taken at the maximum 9.4% corporation tax rate.

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Mineral Exploration Incentive Credits BRU: Audit Operations  
 Sponsor: Rep. Foster, Vezev Component: Income and Excise Audit  
 Requestor: (H) RES COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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
CAPITAL						
REVENUE FUND SOURCE: GF	*****	*****	*****	*****	*****	*****

FUNDING (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY95) impact \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

As explained in the attached analysis the Department is unable to determine a reasonable estimate for this bill's impact on future State revenues. Several concerns have been raised addressing the difficulties in implementing the bill as currently written.

Prepared by: Robert N. Bartholomew, Security Director *Robert N. Bartholomew* Phone: 465-2320  
 Division: Income and Excise Audit Date: 3/13/95  
 Approved by Commissioner: *[Signature]* Date: 3/13/95  
 Agency: Department of Revenue

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### Bill Analysis

This bill grants exploration incentive credits to qualified applicants for costs of activities related to determining the existence, location, extent and quality of locatable or leasable mineral or coal deposits. This bill does not apply to oil and gas exploration. It appears that this legislation applies to both existing and new operations.

Credits may be claimed against corporation income and mining license taxes administered by Department of Revenue (DOR), under AS 43.20 and AS 43.65, royalties and rents, administered by Department of Natural Resources, under AS 38.05.135 - 38.05.175 and AS 38.05.211. Credits are limited to 50% of the combined amount of taxes, royalties and rents that are payable for activities, i.e. sites on which exploration activities occur. This bill requires that credits be used within 15 years after they are granted and allows for credits to be assigned to the applicant's successor in interest for the exploration site if the successor is a qualified applicant.

To prevent future controversy it may be necessary to provide definitions as to what constitutes a mining "site". This bill has a retroactive effective date of January 1, 1995.

### Operating Costs

DOR does not anticipate any additional operating costs to administer the exploration incentive credit program authorized under this bill. The Department would modify corporation and mining license tax return forms to provide for exploration incentive credits.

While the Department does not anticipate the need for additional audit staff, the scope of corporation income and mining license tax audits will likely have to be expanded to include review of exploration incentive credits which may result in a decrease in overall audit coverage to other tax types.

### State Revenue Impacts

Overview - It is not feasible for Department of Revenue to determine the impacts of this bill on revenue since corporation income and mining license taxes are both based on net income from business or mining operations. The Department is unable to predict whether individual mining sites will incur net income after production begins and since credits are limited to the level of future taxable income no reasonable estimate can be made.

For fiscal year 1994, the state collected \$162,000 in mining license taxes and no estimate can be made for the portion of corporation net income tax collected which would be impacted by the proposed tax credits.

Overall, exploration incentive credits are limited to qualified exploration costs. According to DNR exploration expenditures during calendar year 1994 were approximately \$30 million. For 1994, credits would have been limited to \$30 million under this bill and unused portions would be available for a 15-year credit carryforward, assuming corporations had sufficient net income to qualify for the credit.

State Revenue Impacts, continued

Concerns - A major concern for the Department is the increased complexity in corporation tax calculations the proposed legislation would create. Currently corporation taxes are based on income from combined operations inside and outside of Alaska. Taxpayers are currently not required to account for or report income on a site-by-site basis, which would be required by this bill. The Department does not believe that there is a simple and reasonable way to calculate and apply the proposed credits within the corporation income tax structure currently in place.

In discussions with Department of Natural Resources (DNR) and Department of Commerce and Economic Development it was agreed that for increased accountability credits should be applied for annually in advance of the actual expenditure. DNR would be responsible for preapproval and tracking of the eligible credits. Without this clause, a company would potentially submit documentation for expenditures many years after the costs were incurred.

For purposes of AS 43.20 and AS 43.65, for every million dollars in net income, a business would be allowed a maximum credit of \$80,500 (\$47,000 and \$33,500 credit against corporation and mining tax, respectively). Businesses gain an additional tax benefit because they would be allowed to deduct exploration costs from revenues in determining net income upon which taxes are based.

For example, a corporation's exploration activities prove to be very profitable and in a subsequent year, the combined corporation and mining taxes payable from the individual site is calculated to be \$100,000. In this case, the corporation is allowed to claim a \$50,000 credit. The same corporation has other mineral production activities outside of Alaska that are not profitable and when the corporation files its combined corporation tax return, its overall tax liability is \$50,000. Assuming the corporation claims the \$50,000 credit, the corporation would pay no taxes.

Since this bill does not specify that the credit is nonrefundable it is unclear if a corporation can actually receive a refund if credits exceed the corporation's combined tax liability. If in the example above, the corporation had a combined tax liability of \$40,000, the corporation may try to claim a \$10,000 refund after subtracting the \$50,000 credit from the tax liability. The Department recommends that the bill be amended to add "nonrefundable" before references to the credit.

Other information - New mining operations are exempt from mining license taxes for a period of three and one-half years from the date when production begins under AS 43.55.010. This may be an incentive that is already in place for purposes intended under this bill.

Given the uncertainty of estimating the impact on revenues it may be advisable to add a sunset provision which allows for the impacts to be reevaluated or establishing a cap on the annual amount of credit allowed.

# FISCAL NO'

No. 2  
 Bill Version CSHB 197 (RES)  
 Publish Date: 3/22/95

## STATE OF ALASKA 1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: An Act providing for exploration incentive credits BRU: Resource Development  
for activities involving locatable and leasable minerals and coal... Component: Mining Development  
 Sponsor: Reoresentative(s) Foster, Vezey  
 Requestor: \_\_\_\_\_ Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

	FY96	FY97	FY98	FY99	FY00	FY01
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES	54.0	54.0	54.0	54.0	54.0	54.0
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (1004)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>est. (100.0)</b>	<b>est. (100.0)</b>	<b>(1,900.0)</b>

FUND SOURCE (Thousands of Dollars)

	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF	62.0	62.0	62.0	162.0	162.0	429.4
1005 GF/Program Receipts				(100.0)	(100.0)	(367.4)
1006 GFMHTIA						
Other						
<b>TOTAL</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>	<b>62.0</b>

Estimate of any current year (FY95) cost: \$ 10.0

POSITIONS

	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Jules Tileston, Director Phone: 762-2165  
 Division: Mining and Water Date: 7-Mar-95  
 Approved by Commissioner: [Signature] Date: 3-7-95  
 Agency: Natural Resources

ATTACHMENT TO FISCAL NOTE - HB197  
March 7, 1995

If exploration incentive credit for coal exploration is allowed to remain in this bill, it could result in a minimum \$1.5 million dollar loss in direct coal royalty and tax revenues in the out-years. A significant amount of exploration cost precedes mining of coal. The state already has a regulation for granting royalty relief if a coal operator applies. The state's coal royalty is 5% of adjusted gross value. Transportation costs from the mine mouth to point of sale, and beneficiation costs are deductible from the coal sales price. Rent is deductible from royalty as well. Locatable mineral royalty is 3% of net profits, and rental is \$1/acre. These costs are pretty low. A three and a half year mining tax exemption is allowed for new mining operations.

Notwithstanding the coal royalty decrease, a several hundred thousand dollar decrease in "6(i)" rental revenue (rents and royalties return on state mineral production) could also occur in the out-years if credits are not restricted to claims for which activities take place. A decrease in rental revenue will impact the division's operating budget and affect current services provided by the division to the industry. Currently approximately \$367.4 in program receipts from 6(i) goes into the division's budget to support the program. In addition, approximately \$418.0 from this program goes into the Permanent Fund. This legislation would provide for no change to the Permanent Fund amount, but the amount going to the division operating budget would be eliminated.

Revenues

We assume that the exploration credits will result in the long-term loss of the following revenues:

Coal Royalties	\$1.5million
Mining Leases & Claims 6(i)	<u>\$ .4 million</u>
	\$1.9 million

Sections 27.30.020 and 30 do not specify how this credit is taken, it could be either against the Department of Revenue or the Department of Natural Resources. We assume these credits will use all of DNR's revenue stream.

Fund Sources Changes in Long-term

Delete program receipts	\$(367.4)
General Fund	\$ 367.4

In order to maintain the existing level of service the division provides to the industry, the \$367.4 of program receipt authorization would need to be replaced with general fund over the long-term.

Position

One new position, a Geologist II, will be needed to provide technical work associated with this legislation. This involves prequalifying work elements and review of work completed. As this bill is effective immediately, it is estimated that \$10.0 will be necessary to pay for the additional position in FY95.

One new position	<u>\$ 62.0</u>
and associated costs	\$ 62.0

# SENATE COMMITTEE REPORT

DATE: 3/30/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-26-95

*Final*

Resources Committee considered CS FOR HOUSE BILL NO. 197(RES)

"An Act providing for exploration incentive credits for activities involving locatable and leasable mineral and coal deposits on certain land in the state; and providing for an effective date."

and recommends:

be replaced with SEN CS <sup>CS</sup> / HB 197 (RES)

adopt previous      CS      ( )

attached amendment(s)

adopt Letter of Intent by HOUSE RESOURCES Committee

further referral to the      Committee

*P (+) FAL + P/W*

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical charge
- new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Miss. Taylor</i>	<input checked="" type="checkbox"/>				
<i>Mr. Hoffman</i>	<input checked="" type="checkbox"/>				
<i>Miss. Ellice</i>	<input checked="" type="checkbox"/>				
<i>Rep. Heford</i>	<input checked="" type="checkbox"/>				
<i>CHAIR: Sen. A. Leman</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal
<i>DNE</i>	<i>3/22</i>		<i>62.0</i>
<i>DOL - Audit</i>	<i>3/22</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill



ALASKA STATE LEGISLATURE  
REPRESENTATIVE RICHARD FOSTER

Session: STATE CAPITOL, ROOM 410, JUNEAU, ALASKA 99811 • 907-465-3789 • FAX 907-465-3242  
Interim: PO BOX 1630, NOME, ALASKA 99762 • 907-443 5036 • FAX 907-443-2162

RECEIVED

MAY 1 REC'D

**Date:** April 28, 1995

**To:** Senator Steve Frank  
✓ Senator Rick Halford  
Co-Chairs Senate Finance

**From:** Richard Foster *RF*  
Co-Chair, House Finance

**RE:** Scheduling of Senate CSHB 197 (Res).

Please consider this request to schedule Senate CSHB 197 (Res); An act Providing for Exploration Incentive Credits for Activities Involving Locatable and Leasable Mineral and Coal Deposits on Certain Land in the State.

I understand the time constraints upon your committee as we near the end of session but I am hoping sufficient time remains to act on this legislation. As you know, a bill similar to this passed both bodies of the legislature last year but failed to receive concurrence in the last hours of the session. I believe the Senate CSHB 197(Res) is an improved version and urge your consideration.

Please feel welcome to call John Walsh in my office for additional details (3722). Thank you.

**HB**

**2000**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 14, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/21/95

The FINANCE Committee considered:

HB 200

HOUSE BILL NO. 200

CUSTODY OF PRISONERS

"An Act reassigning responsibility for the custody of persons pending their arraignments, commitment to the custody of the commissioner of corrections, or admission to a state correctional facility, and authorizing the commissioner of corrections to employ guards for emergencies on the same basis as the commissioner of public safety, as partially exempt service employees; and providing for an effective date."

recommends it be replaced with the following committee substitute \_\_\_\_\_ [ ] the same title  
 [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
 [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 [ ] fiscal note(s) \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_ [X] zero fiscal note(s) PS 3/14/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Don Wulder</i>	Wulder	X			
<i>Terry Martin</i>	Martin	X			
<i>Sean Parrell</i>	Parrell	X			
<i>Jim Krussendorf</i>	Krussendorf	X			
<i>Eric Kohring</i>	Kohring	X			
<i>Gene Theriault</i>	Theriault	X			
<i>Mike Navarre</i>	Navarre			X	
<i>Jay Brown</i>	Brown	X			
<i>Richard Foster</i>	Foster	X			

CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*  
 Hanley Foster

# FISCAL NOTE

No. 1  
 Bill Version: HB 200  
 (H) Publish Date: 3/14/95

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Custody of prisoners BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Representative Mulder  
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ -0-

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)  
 No fiscal impact is anticipated to the Alaska State Troopers.

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 03/06/95  
 Approved by Commissioner: *Dee Smith* Date: 3-8-95  
 Agency: Ronald L. Orte, Dept. of Public Safety

## SPONSOR STATEMENT HOUSE BILL 200

House Bill 200 moves Alaska's community or "contract" jails program from the Department of Public Safety to the Department of Corrections.

The Governor's Task Force on Community Jails studied the issue for 2 years and recommended the governor and the legislature move the Contract Jails Program from Public Safety to Corrections. Governor Hickel's Organizational Efficiency Task Force also made the same recommendation. The Department of Public Safety and Department of Corrections are prepared to make the transfer. The Governor's FY 96 budget, both the Hickel version and the Knowles version, is built expecting this transfer to occur.

The Division of Corrections, under the Department of Health & Social Services, operating jointly with the Department of Public Safety, managed the community jail program until the early 1980's. The administration of the program was assigned to Public Safety as the legislature and the governor believed that the Department of Public Safety would be better able to manage the jails than the newly created Department of Corrections.

At that time we called the facilities "overnight" or "waiting" places for prisoners entering correctional facilities. We used the facilities almost exclusively as pre-arraignment facilities. Immediately following arraignment, we moved inmates to a prison in a larger community where the courts were. They remained in the Department of Corrections facility until released from custody.

Over time, the focus of these jails has changed. The courts and other parts of the criminal justice system have expanded into rural areas to

SPONSOR STATEMENT  
HOUSE BILL 200  
PAGE 2

provide a more community based service that is thought to be more meaningful to citizens of the regions affected. The community jail facilities have become full blown jails used for holding inmates from pre-arraignment status through release following sentence. They provide the complete range of services for prisoners who serve their full term at the jail.

The result is a need to move community jails to the department with the expertise to deal effectively with the current realities of those facilities. The primary mission of the Department of Public Safety is law enforcement. The Department of Correction is mandated to provide safe, secure, and humane facilities of detention and incarceration. The functions of the Community Jails Program are more consistent with the mission, responsibilities, and expertise of the Department of Corrections.



Official Business

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

State Capitol  
Juneau, AK 99801-1182

DISTRICT 13

### SPONSOR STATEMENT

*HESS Committee Substitute for House Bill 124: "An act transferring the regulation of nursing home administrators to the Department of Commerce & Economic Development; abolishing the Board of Nursing Home Administrators; and providing for an effective date."*

This bill eliminates the State Board of Nursing Home Administrators and transfers its legal duties to license and regulate to the Division of Occupational Licensing in the Department of Commerce. The Board is mere months from ceasing to exist legally, having passed its 'sunset date' on the 30th of June last year. At the request of the State Hospital & Nursing Home Association, I introduced HB 124 to extend the life of the Board of Nursing Home Administrators for ten more years, but the Association have since decided that they would prefer to be regulated by the Division of Occupational Licensing. The State is required by federal regulations to license persons who administer nursing homes as a condition for the receipt of Medicaid funds. Since 1975 this licensing function has been the duty of the Board of Nursing Home Administrators. It is possible, and administratively easier and less expensive, for staff at the Division of Occupational Licensing to meet federal regulatory requirements for nursing home administrators. The State Hospital & Nursing Home Association, the Division of Medical Assistance, and the Division of Occupational Licensing support transferring supervision of nursing home administrators to the Department of Commerce.

Please support the HESS CS for HB 124.

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*GOVERNOR'S TASK FORCE*

*ON THE*

*CONTRACT JAILS PROGRAM*

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*Report to Governor Hickel*  
*November, 1993*  
*Juneau, Alaska*



GOVERNOR'S TASK FORCE  
ON THE  
CONTRACT JAILS PROGRAM

Report to Governor Hickel  
November 15, 1993  
Juneau, Alaska

Task Force Members

Representative Gail Phillips, Chair

Representative Eileen MacLean

Senator George Jacko

Senator Robin Taylor

Larry McKinstry, Deputy Commissioner, Department of Corrections

C.E. Swackhammer, Deputy Commissioner, Department of Public Safety

Shelby Stastny, Director Office of Management and Budget

Tom Briggs, City Manager, Craig

James (Jim) Christensen, Director, Dept. of Public Safety, Barrow

Rick Gifford, City Finance Director, Seward

Henry Graper, City Manager, Dillingham

Glenn Herbst, Director, Dept. of Public Safety, Unalaska

Jack McDonald, Chief of Police, City of Kodiak

John Newell, Chief of Police, City of Sitka

Jeff Smith, City Manager, Kotzebue

Office of the Governor represented by:

Bill Overstreet, Deputy Chief of Staff

Designee: John Hendrickson, Special Staff Assistant

Committee Staff: Sandy Nusbaum, Special Assistant to  
Representative Gail Phillips

Issue:

\*\*\*\* APPROPRIATE STATE AGENCY TO MANAGE RURAL JAIL FACILITIES \*\*\*\*

The Division of Corrections, under the Department of Health & Social Services, operating jointly with the Department of Public Safety managed the contract jail program until the early 1980's. The administration of the program was then assigned to the Department of Public Safety as it was believed, at the time, that the Department of Public Safety would be better able to manage it than would the newly created Department of Corrections. At that time the facilities were termed "overnight" or "waiting" places for prisoners entering correctional facilities. The rationale for this transfer of responsibility was simple.....the state troopers had more of a presence in the rural communities and they were the ones who would be arresting and putting prisoners into the facilities.

Discussion:

The question of who should manage the contract jail program - the Department of Corrections or the Department of Public Safety, was one which plagued the Task Forces from the beginning. The members wrestled with this question on numerous occasions.

What other studies have recommended on this issue.....

THE ALASKA CORRECTIONS MASTER PLAN (Completed in 1979) stated the following:

".....one less costly means of improving the quality of institutional corrections in rural Alaska is the statutory consolidation of responsibility of all local jail contracts under the Division of Corrections....."  
and

".....in the interests of unifying correctional services in Alaska, it is recommended that the Department of Public Safety no longer have responsibility for any jail contacts"

THE GOVERNOR'S EFFICIENCY TASK FORCE (July, 1992) made the following recommendations:

"Continue to examine the possibility of transferring contract jails and prisoner transportation functions to the Department of Corrections (DOC).

While transfer of these services would not necessarily result in a net savings to the state, supervising, maintaining and transporting prisoners are properly Corrections responsibilities and may be managed more efficiently by that department. The focus of DPS efforts should center on crime prevention and law enforcement."

THE DIVISION OF AUDIT AND MANAGEMENT SERVICES, under the Office of Budget and Management, reviewed and evaluated the contract jails program (Report 12-58), dated October, 1991, and made this final observation:

".....we find some reasons that support reassignment of the contract jail program to the Department of Corrections.

In essence, we believe the incarceration function of the contract jail program is inconsistent with the mission of DPS. Incarceration is more consistent with the mission of DOC.

Some police chiefs report DPS is not aware of the problems of incarcerating prisoners. For some of the reasons mentioned in this report, they suggest the program may be better served if managed by DOC. They suggest DOC has the training, experience and expertise needed to incarcerate prisoners.

We believe there is a need for both agencies to formally study the issue in terms of costs and benefits. The study conclusions should be presented for the Governor's consideration."  
(Note 2)

Members of the Task Force provided in-depth and specific recommendations on their choice for management of the contract jails program. Their recommendations include the following comments:

2/ In a memorandum, dated October 22, 1991, in response to the audit performed by the Office of Management and Budget, the Commissioner of Public Safety made the following statement:

".....in my judgment the Department of Public Safety should not be in the jail business. This department is, first and foremost, a law enforcement agency....."

".....While I am concerned about the political ability of DOC at this time, I feel that DOC would probably be the best State agency to manage the rural jails....."

".....The primary mission of the Department of Public Safety is in the area of crime prevention and law enforcement. The Department of Corrections is mandated to provide safe, secure, and humane facilities of detention and incarceration. The functions of the Contract Jails Program are more consistent with the responsibilities and expertise of the Department of Corrections.

Department of Public Safety lacks the in-house expertise in operating jails....."

".....Adopt a transition plan to transfer administration of contract jail facilities from the Department of Public Safety to the Department of Corrections by the end of fiscal year 1995....."

".....The control of contract jails should be transferred from the Department of Public Safety to the Department of Corrections.

The Department of Corrections is the expert agency in regards to jails and should have control over all jails in the state....."

".....the Department of Corrections has developed indepth expertise in the management of correctional institutions. Parallel with that development has been the Department of Public Safety's need to focus its limited resources on law enforcement issues....."

".....we believe it prudent that these responsibilities be transferred to the Department of Corrections....."

".....should this transition occur.....we would recommend any transitional plan be structured to allow for a phased-in or gradual evolution over a pre-planned time period to allow for a smooth and orderly transfer....."

".....with regard to the transfer of the contract jail program from the Department of Public Safety to Corrections, I think such a transition may be damaging to the program at this time. It is necessary to establish a long-standing administrator of the contract jail program before its movement to another department would be beneficial....."

".....we believe that the DPS should continue as the responsible department for overseeing the contract jail program. There is a very real concerns that if the DOC were to assume control of the program, all of the municipal facilities participating will be under the Cleary decision umbrella. Until this possibility is eliminated, we believe that DPS should continue as the responsible department....."  
(Note 3)

".....the Department of Corrections has the expertise to assist in the development of standards for local jails. Once a set of standards is established there is no reason the Department of Public Safety could not continue to monitor compliance with the standards and handle funding and contract issues....."

".....recommend that it remain with the Department of Public Safety versus the Department of Corrections....."

#### Recommendations:

Because of the myriad of opinions on if and how this transfer should take place, it was determined by the Chair that the Task Force conduct an open dicussion at the final meeting on November 3, 1993, which was held in order to adopt the Task Force's report to the Governor.

The Task Force's ultimate decision is not without some hesitation and stipulations.

The majority of the members of this Task Force recommend that the responsibility for management and administration of the Contract Jails Program be transferred from the Department of Public Safety to the Department of Corrections.

It would be this Task Force's recommendation that, in order to insure an orderly transition, this transfer of authority be gradually undertaken over a period of time with a proposed completion date of December, 1994.

3/ Task Force received testimony from the Department of Law  
".....even if DOC took over the monitoring and oversight of the contracts, Cleary still would not apply....."  
(Taken from transcript of July 13, 1993 meeting of the Contract Jails Task Force)

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**GOVERNOR'S TASK FORCE**

**ON**

**COMMUNITY JAILS**

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*Final Report to Governor Hickel  
November, 1994  
Juneau Alaska*



**GOVERNOR'S TASK FORCE  
ON THE  
COMMUNITY JAILS PROGRAM**

**Final Report to Governor Hickel  
November, 1994  
Juneau, Alaska**

**Task Force Members 1993 - 1994**

**Representative Gail Phillips, Chair**

**Senator Robin Taylor**

**Senator George Jacko**

**Representative Eileen MacLean**

**Frank Prewitt**, Commissioner, Department of Corrections

Designee: **Larry McKinstry**, Deputy Commissioner, Department of Corrections

**C.E. Swackhammer**, Deputy Commissioner, Department of Public Safety

**Shelby Stastny**, Director, Office of Management and Budget

**Deborah Wing**, Director, DF&YS, Department of Health & Social Services\*\*

**Dean J. Guaneli**, Asst. Attorney General, Department of Law\*\*

**Tom Briggs**, City Manager, Craig

**James (Jim) Christensen**, Director, Department of Public Safety, Barrow\*

**Rick Gifford**, City Finance Director, Seward

**Henry Graper**, City Manager, Dillingham\*

**Glenn Herbst**, Director, Department of Public Safety, Unalaska

**Jack McDonald**, Chief of Police, City of Kodiak

**John Newell**, Chief of Police, City of Sitka

**Dennis Packer**, Director, Department of Public Safety, Barrow

**Jeff Smith**, City Manager, Kotzebue

**Gordon J. Tans**, Attorney at Law, Perkins, Coie, Anchorage\*\*

Office of the Governor represented in 1993 by:

**Bill Overstreet**, Deputy Chief of Staff

Designee: **John Hendrickson**, Special Staff Assistant

Office of the Governor represented in 1994 by:

**Cheryl Frasca**, Deputy Chief of Staff

\* Served as member during 1993

\*\*Appointed 1994

Committee Staff:

**Sandy Nusbaum**, Special Assistant to  
Representative Gail Phillips

## **TRANSFER OF MANAGEMENT & ADMINISTRATION OF THE COMMUNITY JAILS PROGRAM**

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### **Issue:**

The Division of Corrections, under the Department of Health & Social Services, operating jointly with the Department of Public Safety managed the jails program until the early 1980's. The administration of the program was then assigned to the Department of Public Safety as it was believed, at the time, that the Department of Public Safety would be better able to manage it than would the newly created Department of Corrections. At that time the facilities were termed "overnight" or "waiting" places for prisoners entering correctional facilities. The rationale for this transfer of responsibility was simple.....the state troopers had more of a presence in the rural communities and they were the ones who would be arresting and putting prisoners into the facilities.

### **Discussion:**

(Refer to original Governor's Task Force report on the Contract Jails Program, dated November 1993.)

### **Recommendations:**

(Excerpts from original Governor's Task Force report on the Contract Jails Program, dated November 1993.)

Because of the myriad of opinions on if and how the transfer should take place, it was determined by the Chair that the Task Force would conduct an open discussion at the final meeting on November 3, 1993, which was held in order to adopt the Task Force's report to the Governor.

The Task Force's ultimate decision was not without some hesitation and stipulations.

The majority of the members of the Task Force recommended that the responsibility for management and administration of the Contract Jails Program be transferred from the Department of Public Safety to the Department of Corrections.

Therefore, it was the Task Force's recommendation that, in order to insure an orderly transition, the transfer of authority would be gradually undertaken over a period of time with a proposed completion date of December, 1994.

## FINAL RECOMMENDATIONS:

On May 24, 1994, the Department of Public Safety contacted the Office of Management & Budget officially requesting the name of the Contract Jails Budget Component be changed to "Community Jails".

In order that State statutes properly reflect the transfer of responsibility for management and administration of the Community Jails Program from the Department of Public Safety to the Department of Corrections, and particularly as it relates to emergency guard hires, the Chair contacted the Division of Legislative Legal Services and requested a legal opinion and the preparation of draft legislation to carry out this purpose.

Legal counsel has reviewed the Chair's request and has recommended that either an Executive Order and/or statute change be initiated in order to effectuate the transfer.

According to legal counsel, to transfer the responsibility between the Departments of Public Safety and Corrections, amendments to AS 33.30.071 are preferable; repeal of the statute reference is a feasible alternative, or it may be initiated by an Executive Order presented under the authority of article III, section 23 of the Alaska State Constitution and submitted in the manner prescribed by AS 24.08.210.

Staff has prepared a draft Executive Order, incorporated into this report, with the recommendation that it be introduced by the Governor. (Document A)

It is the intention of the Chair to submit proposed legislation for introduction and passage during the First Session of the Nineteenth Legislature. (Document B)

It is further recommended that the Department of Corrections promulgate regulations in Title 22 of the Alaska Administrative Code, concerning the use of emergency guards in community jail facilities similar to those presently contained in Title 13 Chapter 62. EMERGENCY GUARDS of the Alaska Administrative Code.

⇒ **Draft Executive Order (Document A)**

⇒ **Draft Legislation (Document B)**

# **Governor Hickel's Organizational Efficiency Task Force**

*Summary  
Report*



*Office of the Governor  
Office of Management and Budget*

*July, 1992*

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## DEPARTMENT OF PUBLIC SAFETY

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1. Continue to examine the possibility of transferring contract jails and prisoner transportation functions to the Department of Corrections (DOC).

While transfer of these services would not necessarily result in net savings to the state, supervising, maintaining and transporting prisoners are properly Corrections' responsibilities and may be managed more efficiently by that department. The focus of DPS efforts should center on crime prevention and law enforcement.

2. Examine the possibility of merging the DOT&PF traffic accident reporting system with existing programs in DPS.

This program would logically tie in and augment the DPS information base utilized by the state troopers.

3. Establish a task force to review the issue of state vs. local responsibility for provision of police services, prosecution, and jails.

There should be consistency among the various local governments in their responsibility to provide these services.

4. Establish pay levels for troopers that are lower than the pay levels of their supervisors.

Public Safety Employees Association contracts have skewed salary levels of troopers beyond the salaries of management, due largely to the effects of binding arbitration. If arbitration of labor contracts cannot be eliminated, AST management should receive additional compensation to establish the proper relationship between troopers and supervisors.

5. The VPSO program should be strengthened as an efficient and cost effective means of delivering public protection services to small rural communities.

Specifically, the following steps should be taken:

- Increase the number of oversight troopers,
- Increase on-site training and the frequency of training academies,
- Increase the pay of VPSO officers established in contracts with managing Native corporations, and
- Develop a career path for VPSO officers.

**HB**

**2000**

**SFIN**

**FILE**

# SENATE COMMITTEE REPORT

DATE: 3/28/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-25-95

*gma*

Judiciary Committee considered HOUSE BILL NO. 200

Reassigning responsibility for the custody of persons pending their arraignments, or admission to a state correctional facility; employing guards for emergencies; efd.

*PHΦ*

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical change
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Leslie Green</i>	<input checked="" type="checkbox"/>	<i>Phillips</i>	<input checked="" type="checkbox"/>		
<i>Mike Huber</i>	<input checked="" type="checkbox"/>	<i>Ad Adams</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Adrian Taylor</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>Public Safety</i>	<i>3/6/95</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

03/24/95

HOUSE JOURNAL

PAGE 0910

FIN RPT 9DP 1NR  
ZERO FISCAL NOTE (DPS) 3/14/95

844  
844

REPRESENTATIVE VEZEY MOVED AND ASKED UNANIMOUS CONSENT THAT HB 200 BE CONSIDERED ENGROSSED, ADVANCED TO THIRD READING AND PLACED ON FINAL PASSAGE. THERE BEING NO OBJECTION, IT WAS SO ORDERED.

HB 200 WAS READ THE THIRD TIME.

THE QUESTION BEING: "SHALL HB 200 PASS THE HOUSE?" THE ROLL WAS TAKEN WITH THE FOLLOWING RESULT:

HB 200  
THIRD READING  
FINAL PASSAGE

YEAS: 39 NAYS: 0 EXCUSED: 1 ABSENT: 0

YEAS: AUSTERMAN, BARNES, BRICE, BROWN, BUNDE, DAVIES, B.DAVIS, G.DAVIS, ELTON, FINKELSTEIN, FOSTER, GREEN, GRUSSENDORF, HANLEY, IVAN, JAMES, KELLY, KOHRING, KOTT, MACKIE, MACLEAN, MARTIN, MASEK, MOSES, MULDER, NAVARRE, NICHOLIA, OGAN, PARNELL, PHILLIPS, PORTER, ROBINSON, ROKEBERG, SANDERS, THERRIault, TOOHEY, VEZEY, WILLIAMS, WILLIS

EXCUSED: KUBINA

AND SO, HB 200 PASSED THE HOUSE.

03/24/95

HOUSE JOURNAL

PAGE 0911

HB 200

REPRESENTATIVE VEZEY MOVED AND ASKED UNANIMOUS CONSENT THAT THE ROLL CALL ON THE PASSAGE OF THE BILL BE CONSIDERED THE ROLL CALL ON THE EFFECTIVE DATE CLAUSE. THERE BEING NO OBJECTION, IT WAS SO ORDERED.

HB 200 WAS REFERRED TO THE CHIEF CLERK FOR ENGROSSMENT.

SELECTION=>

B005-LAST PAGE

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

N<sub>o</sub> 1  
Bill Version: HB 200  
(H) Publish Date: 3/14/95

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: Custody of prisoners BRU: Alaska State Troopers  
Component: Detachments  
Sponsor: Representative Mulder  
Requestor: (H) Judiciary COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)  
No fiscal impact is anticipated to the Alaska State Troopers.

Prepared By: Francis C. Allan Phone: 269-5691  
Division: Alaska State Troopers Date: 03/06/95  
Approved by Commissioner: *Ronald L. Otte* Date: 3-8-95  
Agency: Ronald L. Otte, Dept. of Public Safety

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For further distribution information call the Governor's Legislative Office

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DATE: 3/28/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-25-95

*gm*

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and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
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- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical change
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Leslie Green</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>Mike Huber</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Adrian L. Taylor</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

<i>Public Safety</i>	<i>3/6/95</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

03/24/95

HOUSE JOURNAL

PAGE 0910

FIN RPT 9DP 1NR  
ZERO FISCAL NOTE (DPS) 3/14/95

844  
844

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HB 200  
THIRD READING  
FINAL PASSAGE

YEAS: 39 NAYS: 0 EXCUSED: 1 ABSENT: 0

YEAS: AUSTERMAN, BARNES, BRICE, BROWN, BUNDE, DAVIES, B.DAVIS, G.DAVIS, ELTON, FINKELSTEIN, FOSTER, GREEN, GRUSSENDORF, HANLEY, IVAN, JAMES, KELLY, KOHRING, KOTT, MACKIE, MACLEAN, MARTIN, MASEK, MOSES, MULDER, NAVARRE, NICHOLIA, OGAN, PARNELL, PHILLIPS, PORTER, ROBINSON, ROKEBERG, SANDERS, THERRIAULT, TOOHEY, VEZEY, WILLIAMS, WILLIS

EXCUSED: KUBINA

AND SO, HB 200 PASSED THE HOUSE.

03/24/95

HOUSE JOURNAL

PAGE 0911

HB 200

REPRESENTATIVE VEZEY MOVED AND ASKED UNANIMOUS CONSENT THAT THE ROLL CALL ON THE PASSAGE OF THE BILL BE CONSIDERED THE ROLL CALL ON THE EFFECTIVE DATE CLAUSE. THERE BEING NO OBJECTION, IT WAS SO ORDERED.

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SELECTION=>

B005-LAST PAGE

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

**HB**

**201**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 12, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/22/95

The FINANCE Committee considered:

HB 201

HOUSE BILL NO. 201

PRISONER LITIGATION AND APPEALS

"An Act relating to prisoner litigation, post-conviction relief, sentence appeals, amending Alaska Administrative Rule 10, Alaska Rules of Appellate Procedure 204, 208, 209, 215, 521, 603, and 604, and Alaska Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 201 (FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) AK Court Sys

zero fiscal note(s) Law 2/27/95  
Corrections 2/27/95 ; DPS 2/27/95 ; Admin<sup>(2)</sup> 2/27/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Terry Martin</i>	Martin	X			
<i>Jim Kohring</i>	Kohring	X			
<i>Don Grussendorf</i>	Grussendorf	X			
<i>Mike Savare</i>	Savare	✓			
<i>Tony Brown</i>	Brown				✓
<i>Peter Kelly</i>	Kelly	✓			
<i>Gene Therriault</i>	Therriault	X			
<i>Richard Foster</i>	Foster	X			

CO-CHAIR'S SIGNATURE

*Mark Hanley*  
Hanley

*Richard Foster*  
Foster

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 201 (FIN)

Revision Date: 04/19/95  
Title: Prisoner Litigation and Appeals  
Sponsor: House Rules by request of the Governor  
Requestor: \_\_\_\_\_

Dept. Affected: Alaska Court System  
BRU: Trial Courts  
Components: \_\_\_\_\_  
COMPONENT SERIAL NO. 768

**EXPENDITURES/REVENUES** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

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

No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 284-8228  
Agency: Alaska Court System Date: 04/19/95

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]* Date: 04/19/95  
Agency: Alaska Court System

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# FISCAL NOTE

No. 1  
 Bill Version: HB 201  
 (H) Publish Date: 2/27/95

**STATE OF ALASKA  
 1995 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...relating to prisoner litigation, post-conviction relief, sentence appeals...Alaska Administrative Rule 10..." BRU: Prosecution  
 Sponsor: Rules by Request of the Governor Component: All  
 Requester: Governor's Office/OMB COMPONENT SERIAL NO. 0085-0090

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

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

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill addresses many of the problems arising from prisoner litigation, sentence appeals, and frivolous or extremely tardy post-conviction relief applications. With respect to prisoner litigation, the bill would require prisoners to pay filing fees commensurate with their ability to pay and amends the exemptions statutes so that the state can collect judgments entered against prisoner litigants. The bill recognizes prisoners' right of access to the courts and reduces frivolous litigation without infringing on that right.

With respect to sentence appeals, the bill prevents defendants from appealing sentences or those portions of sentences that they agreed to as part of a plea agreement with the state. For example, a defendant who agrees to a sentence of up to three years should not be heard to complain if the court imposes a sentence of that length or less. It also restricts defendants convicted of felonies from appealing as excessive any sentence of two years or less and defendants convicted of misdemeanors from appealing as excessive a sentence of 120 days or less.

Prepared by: Richard I. Peques, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 2/21/95  
 Date: 2/21/95

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION:

Finally, the bill sets limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures, including one round of post-conviction relief proceedings, and lost.

Although the bill will not result in a cost reduction in the near-term, existing litigation will probably be maintained and the reforms in the post-conviction relief process will not take effect for another year, the bill will certainly contain current costs and avoid the continuing increases in the state's prisoners' rights and appeals litigation costs.

COMMITTEE COPY

TONY KNOWLES  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB201  
P O Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532

February 27, 1995

The Honorable Gail Phillips  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses many of the problems arising from prisoner litigation, sentence appeals, and frivolous or extremely tardy post-conviction relief motions. This bill is intended to ensure that offenders focus their attention on their rehabilitation and reformation, rather than on endless "recreational" litigation.

The bill also is intended to promote the finality of convictions, preserve the sanctity of jury verdicts, minimize the litigation of stale claims, and prevent the unjustified dismissal of a criminal case when reprosecution is not possible. Frivolous litigation filed by prisoners misallocates resources of the judiciary, the Department of Law, the Public Defender's Office, the Office of Public Advocacy, the Department of Corrections, and the public.

Sections 1-5, 13-15, 17, 20-21, and 31 relate to prisoner litigation. These sections are designed to **reduce** the number of frivolous suits filed by prisoners that involve the state, its employees, and former employees. This prisoner litigation is preventing the state and the court from giving adequate attention to legitimate lawsuits.

Sections 1, 15, and 17 of the bill require prisoners to pay filing fees for civil proceedings according to their ability to pay. Section 1 authorizes the court to summarily dismiss suits or appeals filed by prisoners who pay less than full filing fees when those suits or appeals are frivolous or malicious or fail to state a claim upon which relief can be granted. Sections 2-5 amend the exemptions statutes so that the state can collect judgments entered against prisoner litigants.

The Honorable Gail Phillips  
February 27, 1995  
Page 2

Section 13 authorizes prisoners to appeal administrative disciplinary decisions when their fundamental constitutional rights were violated. Section 20 authorizes courts to stay the imposition of sanctions arising from a disciplinary decision only if the court finds, among other factors, that the prisoner faces irreparable harm if the stay is not granted and the prisoner is likely to succeed on the merits of the appeal.

Sections 7, 8, 11, 12, 18, 22, 27, and 28 relate to sentence appeals. In fiscal year 1994, the court of appeals published opinions from 13 sentence appeals. Twelve of those sentences were upheld by the court of appeals. The court summarily ruled on another 93 sentence appeals in this same time period. Only eight of those were reversed. Thus, over 90 percent of all sentence appeals (97 of 106) have resulted in the sentence being affirmed by the court of appeals. This bill limits appeals from the 90 percent of cases in which the lower court's sentences are routinely upheld. Sections 18 and 22 prevent defendants from appealing sentences or portions of sentences that they agreed to as part of a plea agreement with the state. For example, a defendant who agrees to a sentence of up to three years should not be heard to complain if the court imposes a sentence of that length or less. Similarly, secs. 27 and 28 prevent a court from modifying or reducing a sentence that was imposed in accordance with a sentencing agreement. Sections 7 and 11 restrict defendants convicted of felonies from appealing as excessive any sentence of two years or less, while secs. 8 and 12 restrict defendants convicted of misdemeanors from appealing as excessive a sentence of 120 days or less.

Most of the remaining sections of this bill set limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures and lost. After a prisoner loses on direct appeal, current law allows the prisoner to pursue a second or third round of challenges in state court. These challenges are referred to as "post-conviction relief" proceedings. If the prisoner loses these rounds, the prisoner can start yet another round of challenges in federal court. This bill seeks to reduce the number of third and subsequent rounds of challenges currently allowed under state law. This would limit most prisoners to one direct appeal and one set of post-conviction relief proceedings in the state court system and one set of post-conviction relief proceedings in the federal system.

Section 9 creates a new chapter in the code of criminal procedure to govern post-conviction relief procedures for persons convicted of criminal offenses. This chapter delineates the scope of permissible post-conviction relief claims by prohibiting claims based on the erroneous admission of evidence, illegal searches and seizures, and the excessiveness of a sentence.

The Honorable Gail Phillips  
February 27, 1995  
Page 3

In addition, sec. 9 imposes a maximum time limit from the entry of a conviction for filing an application for post-conviction relief to challenge a judgment of conviction. This section also imposes a one-year limit from the entry of an administrative decision by the Parole Board or Department of Corrections for filing an application for post-conviction relief to challenge a decision involving parole or time accounting. Section 26 imposes a 180-day limit for the filing of a motion for a new trial based on newly discovered evidence, while sec. 19 limits the authority of the appellate court to accept late appeals and petitions for hearing in cases involving criminal offenders.

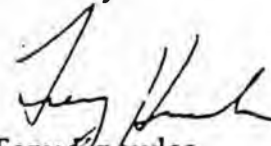
Current law allows a defendant to try to withdraw a plea of guilty or no contest after entering the plea or even after being sentenced if the defendant so chooses. Section 25 requires a defendant who wants to withdraw a plea after having been sentenced to file an application for post-conviction relief. Section 26 eliminates the ability of trial judges to grant a new trial on the ground that the jury's verdict is contrary to the weight of the evidence.

Sections 6 and 16 prohibit appellate courts from releasing convicted defendants on bail until all of the defendant's convictions are vacated. Section 10 limits indigent offenders' right to an appointed attorney to timely applications for post-conviction relief; appointed counsel will no longer be available for appeals from the denial of post-conviction relief.

The bill includes changes to the Alaska Administrative Rules of Court, the Rules of Appellate Procedure, and the Rules of Criminal Procedure, which are necessary to make the rules conform to the proposed statutory changes. Section 32 also amends Criminal Rule 35.1(g) to allow the court in post-conviction relief proceedings to authorize the applicant to participate telephonically or by video conferencing, as an alternative to transporting the applicant to court for the hearing. Finally, secs. 22 and 23 require a court to impose the sentence contemplated by a plea agreement or allow either party to withdraw from the agreement; this is a change from existing law, which allows the court to impose the sentence contemplated in the agreement or impose a sentence more favorable to the defendant. There is no reason that the state should be prohibited from withdrawing from an agreement that the court believes is inappropriate, as defendants are permitted to do.

I urge your favorable action on this bill.

Sincerely,



Tony Knowles  
Governor

# FISCAL NOTE

No. 2  
 Bill Version: #3  
 (H) Publish Date: 2/27/95

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to prisoner litigation..... BRU: all  
 Component: all

Sponsor: \_\_\_\_\_  
 Requester: Governor's Office COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	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						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill would free staff time to address important functions such as security and rehabilitation. It would tend to focus the inmates attention on the treatment and rehabilitation aspects of their confinement and might tend to direct the efforts of family and friends toward more positive activities as well.

This bill would have little effect on additional time served in the system as a whole and would have an offsetting effect of improving the efficiency of the use of staff time.

Prepared by: Jerry Shriner  
 Division: Commissioner's Office

Phone: 465-5582  
 Date: 2/21/95

Approved by Commissioner: *Margaret M. Pugh*  
 Agency: Department of Corrections

Date: 2/21/95

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# FISCAL NOTE

**STATE OF ALASKA  
1995 LEGISLATIVE SESSION**

No. 3  
Bill Version: HB 201  
(H) Publish Date: 2/27/95

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: Frivolous Prisoner Litigation DPS Statewide Support  
Component: Commissioner's Office  
Sponsor: Rules/Governor  
Requestor: Governor's Office COMPONENT SERIAL NO. 0523

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)  
No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Lee Ann Lucas, Special Assistant to the Commissioner Phone: 465-4322  
Division: Commissioner's Office Date: 2/22/95  
Approved by Commissioner: Ronald L. Otte Date: 2/22/95  
Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

No. 4  
Bill Version: HB 201  
(H) Publish Date: 2/27/95

Revision Date: \_\_\_\_\_  
Title: An Act relating to prisoner litigation  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

If this bill becomes law, there will be some reduction of the Public Defender's appellate and post-conviction caseload.

Prepared by: John Salemi, Director  
Division: Public Defender Agency

Phone: 264-4412  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 2/22/95

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FISCAL NOTE

No. 5  
 Bill Version: HB 201  
 (H) Publish Date: 2/27/95

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: An Act relating to prisoner litigation  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will have minimum impact on the Office of Public Advocacy.

Prepared by: Brant McGee, Director  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 2/27/95

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9-GH0028VO  
Luckhaupt  
4/20/95

Adopted  
4/21/95

**CS FOR HOUSE BILL NO. 201( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to prisoner litigation, post-conviction relief, sentence appeals,  
2 execution on judgments against prisoners; amending Alaska Administrative Rule  
3 10, Alaska Rules of Appellate Procedure 204, 208, 209, 215, 403, 521, 602, 603,  
4 and 604, Alaska Rules of Civil Procedure 3, 16.1, and 65, and Alaska Rules  
5 of Criminal Procedure 11, 33, 35, and 35.1; and providing for an effective  
6 date."

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

8 \* **Section 1.** AS 09 is amended by adding a new chapter to read:

9 **CHAPTER 19. PRISONER LITIGATION AGAINST THE STATE.**

10 **Sec. 09.19.010. LIMITATION ON EXEMPTION FROM FILING FEES. (a)**  
11 A prisoner may not commence litigation against the state unless the prisoner has paid  
12 full filing fees to the court or is a claimant under AS 23.20, except that the court may  
13 exempt a prisoner from paying part of those fees if the court finds exceptional

1 circumstances as described in this section.

2 (b) To apply for a filing fee exemption, a prisoner shall submit to the court

3 (1) an affidavit that clearly discloses that the person is a prisoner and  
4 that sets out

5 (A) the prisoner's complete financial situation, including the  
6 prisoner's income, assets, and court-ordered payments;

7 (B) the circumstances that prevent the prisoner from paying full  
8 filing fees; and

9 (C) the nature of the action or appeal and specific facts that  
10 would, if proven, state a claim on which relief can be granted or entitle the  
11 prisoner to reversal on appeal;

12 (2) a certified copy of the prisoner's account statement from the  
13 correctional facility in which the prisoner is being or has been held for the six-month  
14 period preceding the submission of the application; and

15 (3) other documentation or financial information as the court may  
16 require.

17 (c) Based on the submission under (b) of this section, the court may grant an  
18 exemption from part of the applicable filing fees if the court finds that exceptional  
19 circumstances prevent the prisoner from paying full filing fees. Imprisonment and  
20 indigency do not constitute exceptional circumstances if the prisoner has available  
21 income or resources that can be applied to the filing fee.

22 (d) If the court orders an exemption under (c) of this section, the court shall  
23 determine the amount of the exemption and set a filing fee to be paid by the prisoner.  
24 In setting the fee, the court, at a minimum, shall require the prisoner to pay filing fees  
25 equal to 20 percent of the larger of the average monthly deposits made to the prisoner's  
26 account described in (b)(2) of this section, or the average balance in that account, not  
27 to exceed the amount of the full filing fee required under applicable court rules.

28 (e) The court shall mail or otherwise serve its order under (d) of this section  
29 on the prisoner. Along with its order, the court shall give written notice that the case  
30 or appeal will not be accepted for filing if payment of a filing fee is not made within  
31 30 days after the date of distribution of the order, unless the time for payment is

1 extended by the court. If timely payment is not made, the court may not accept any  
2 filing in the case or appeal. If payment is made, the prisoner's filing and supporting  
3 documents shall be accepted for filing with the court.

4 Sec. 09.19.020. DISMISSAL FOR MATERIAL MISSTATEMENTS. If a  
5 prisoner has filed litigation against the state, the court shall dismiss that litigation if  
6 the court finds that the pleadings filed by the prisoner or an application filed by the  
7 prisoner to obtain an exemption under AS 09.19.010 contain a material statement made  
8 by the prisoner that is not true.

9 Sec. 09.19.030. STAY IN PRISONER DISCIPLINARY APPEALS. A  
10 superior court that reviews a disciplinary decision of the Department of Corrections  
11 as an administrative appeal may not enter an order staying disciplinary sanctions unless  
12 the pleadings filed by the prisoner establish by clear and convincing evidence that the  
13 prisoner has alleged a violation of a fundamental constitutional right and is likely to  
14 succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay  
15 is not granted, that the Department of Corrections can be adequately protected if a stay  
16 is granted, and that a stay will not adversely affect the public interest in effective penal  
17 administration.

18 Sec. 09.19.040. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS  
19 IN PRISONER CASES. In litigation against the state brought by a prisoner, a court  
20 may not enter an injunction or issue an order or decision that would impose an  
21 obligation on the state or its employees that would exceed the obligations imposed by  
22 the United States Constitution, the Constitution of the State of Alaska, and applicable  
23 federal and state statutes and regulations, unless the obligation is agreed to by the state.

24 Sec. 09.19.050. DISCOVERY IN PRISONER CASES. The automatic  
25 disclosure provisions of Alaska Rule of Civil Procedure 16.1 do not apply to litigation  
26 against the state brought by a prisoner.

27 Sec. 09.19.100. DEFINITIONS. In this chapter,

28 (1) "litigation against the state" means a civil action or an appeal from  
29 a civil action or from the final decision of an administrative agency that

30 (A) involves the state, an officer or agent of the state, or a state  
31 employee, or a former officer or agent of the state or state employee, regarding

1                   conduct that occurred during that former officer's, agent's, or employee's state  
2                   employment or agency, whether the officer, agent, or employee is sued in an  
3                   official or a personal capacity; and

4                   (B) is related to a person's status or treatment as a prisoner or  
5                   to a criminal charge against or involving the person;

6                   (2) "prisoner" has the meaning given in AS 33.30.901.

7       \* **Sec. 2.** AS 09.38.030(a) is amended to read:

8                   (a) Except as provided in (b), ~~[AND] (c), and (f)~~ of this section and  
9                   AS 09.38.050, an individual debtor is entitled to an exemption of the individual  
10                  debtor's weekly net earnings not to exceed \$350. The weekly net earnings of an  
11                  individual are determined by subtracting from the weekly gross earnings all sums  
12                  required by law or court order to be withheld. The weekly net earnings of an  
13                  individual paid on a monthly basis are determined by subtracting from the monthly  
14                  gross earnings of the individual all sums required by law or court order to be withheld  
15                  and dividing the remainder by 4.3. The weekly net earnings of an individual paid on  
16                  a semi-monthly basis are determined by subtracting from the semi-monthly gross  
17                  earnings all sums required by law or court order to be withheld and dividing the  
18                  remainder by 2.17.

19       \* **Sec. 3.** AS 09.38.030(b) is amended to read:

20                  (b) An individual who does not receive earnings either weekly, semi-monthly,  
21                  or monthly is entitled to a maximum exemption for the aggregate value of cash and  
22                  other liquid assets available in any month of \$1,400, except as provided in (f) of this  
23                  section and in AS 09.38.050. The term "liquid assets" includes deposits, securities,  
24                  notes, drafts, accrued vacation pay, refunds, prepayments, and receivables, but does not  
25                  include permanent fund dividends before or after receipt by the individual.

26       \* **Sec. 4.** AS 09.38.030 is amended by adding new subsections to read:

27                  (f) The state may execute on a judgment awarded to the state and an officer  
28                  or agent of the state or a state employee, or a former officer, agent, or employee of the  
29                  state may execute on a judgment to that person against a party to an action who is  
30                  incarcerated for a criminal conviction by sending a notice of levy to the correctional  
31                  facility in which the person is incarcerated. All money in an incarcerated person's

1 account at a correctional facility is available for disbursement under a notice of levy  
2 under this subsection, in the following order of priority:

3 (1) to support the dependents of the incarcerated person and to provide  
4 child support payments as required by AS 25.27;

5 (2) to satisfy restitution or fines ordered by a sentencing court to be  
6 paid by the incarcerated person;

7 (3) to pay a civil judgment entered against the incarcerated person as  
8 a result of that person's criminal conduct;

9 (4) to reimburse the state for an award made for violent crimes  
10 compensation under AS 18.67 as a result of the incarcerated person's criminal conduct;

11 (5) to satisfy other judgments entered against a prisoner in litigation  
12 against the state; in this paragraph, "litigation against the state" has the meaning given  
13 in AS 09.19.100.

14 (g) In this section, "correctional facility" has the meaning given in  
15 AS 33.30.901.

16 \* Sec. 5. AS 12.30.040 is amended by adding a new subsection to read:

17 (c) A person who has been convicted of an offense and who has filed an  
18 application for post-conviction relief may not be released on bail until the trial court  
19 or an appellate court enters an order vacating all convictions against the person. A  
20 person who has prevailed on an application for post-conviction relief may seek release  
21 before trial in accordance with the provisions of AS 12.30.020.

22 \* Sec. 6. AS 12.55.120(a) is amended to read:

23 (a) A sentence of imprisonment lawfully imposed by the superior court for a  
24 term or for aggregate terms exceeding two years of unsuspended incarceration for  
25 a felony offense or exceeding 120 days for a misdemeanor offense [OF ONE YEAR  
26 OR MORE] may be appealed to the court of appeals by the defendant on the ground  
27 that the sentence is excessive, unless the sentence was imposed in accordance with  
28 a plea agreement under the applicable Alaska Rules of Criminal Procedure and  
29 that agreement provided for imposition of a specific sentence or a sentence equal  
30 to or less than a specified maximum sentence. If the superior court imposed a  
31 sentence in accordance with a plea agreement that provided for a minimum

1 sentence. the defendant may appeal only that portion of the sentence that exceeds  
2 the minimum sentence provided for in the plea agreement and that exceeds two  
3 years of unsuspended incarceration for a felony offense or 120 days of  
4 unsuspended incarceration for a misdemeanor offense. By appealing a sentence  
5 under this section, the defendant waives the right to plead that by a revision of the  
6 sentence resulting from the appeal the defendant has been twice placed in jeopardy for  
7 the same offense.

8 \* Sec. 7. AS 12.55.120(d) is amended to read:

9 (d) A sentence of imprisonment lawfully imposed by the district court for a  
10 term or for aggregate terms exceeding 120 [90] days of unsuspended incarceration  
11 may be appealed to the superior court by the defendant on the ground that the sentence  
12 is excessive, unless the sentence was imposed in accordance with a plea agreement  
13 under the applicable Alaska Rules of Criminal Procedure and that agreement  
14 provided for imposition of a specific sentence or a sentence equal to or less than  
15 a specified maximum sentence. If the district court imposed a sentence in  
16 accordance with a plea agreement that provided for a minimum sentence, the  
17 defendant may appeal only that portion of the sentence that exceeds the minimum  
18 sentence provided for in the plea agreement and that exceeds 120 days of  
19 unsuspended incarceration. By appealing a sentence under this section, the  
20 defendant waives the right to plead that by a revision of the sentence resulting from  
21 the appeal the defendant has been twice placed in jeopardy for the same offense. A  
22 sentence of imprisonment lawfully imposed by the district court may be appealed to  
23 the superior court by the state on the ground that the sentence is too lenient; however,  
24 when a sentence is appealed by the state, the court may not increase the sentence but  
25 may express its approval or disapproval of the sentence and its reasons in a written  
26 opinion.

27 \* Sec. 8. AS 12 is amended by adding a new chapter to read:

28 CHAPTER 72. POST-CONVICTION RELIEF

29 PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

30 Sec. 12.72.010. SCOPE OF POST-CONVICTION RELIEF. A person who has  
31 been convicted of, or sentenced for, a crime may institute a proceeding for post-

1 conviction relief if the person claims

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

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

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

7 (4) that there exists evidence of material facts, not previously presented  
8 and heard by the court, that requires vacation of the conviction or sentence in the  
9 interest of justice;

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

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

16 (7) that

17 (A) there has been a significant change in law, whether  
18 substantive or procedural, applied in the process leading to the person's  
19 conviction or sentence;

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

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

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

30 (8) that after the imposition of sentence, the applicant seeks to  
31 withdraw a plea of guilty or nolo contendere in order to correct manifest injustice

1 under the Alaska Rules of Criminal Procedure; or

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

4 Sec. 12.72.020. LIMITATIONS ON APPLICATIONS FOR POST-  
5 CONVICTION RELIEF. (a) A claim may not be brought under AS 12.72.010 or the  
6 Alaska Rules of Criminal Procedure if

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (A) was not known within

8 (i) two years after entry of the judgment of conviction  
9 if the claim relates to a conviction;

10 (ii) two years after entry of a court order revoking  
11 probation if the claim relates to a court's revocation of probation; or

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

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

16 (C) is not impeachment evidence; and

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

19 (c) Notwithstanding (a)(6) of this section, a court may hear a claim based on  
20 a final administrative decision of the Board of Parole or the Department of Corrections  
21 if

22 (1) the claim was not and could not have been challenged in a previous  
23 application for post-conviction relief filed under this chapter or under the Alaska Rules  
24 of Criminal Procedure; and

25 (2) a previous application for post-conviction relief relating to the  
26 administrative decision has not been filed under this chapter or under the Alaska Rules  
27 of Criminal Procedure.

28 Sec. 12.72.030. FILING OF APPLICATION FOR POST-CONVICTION  
29 RELIEF. An application for post-conviction relief shall be filed with the clerk at the  
30 court location where the underlying criminal case is filed.

31 Sec. 12.72.040. BURDEN OF PROOF IN POST-CONVICTION RELIEF

1 PROCEEDINGS. A person applying for post-conviction relief must prove all factual  
2 assertions by clear and convincing evidence.

3 \* Sec. 9. AS 18.85.100 is amended by adding a new subsection to read:

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

8 (1) an untimely or successive application for post-conviction relief  
9 under AS 12.72;

10 (2) a petition for review or certiorari from an appellate court ruling on  
11 an application for post-conviction relief; or

12 (3) an action or claim for habeas corpus in federal court attacking a  
13 state conviction.

14 \* Sec. 10. AS 22.07.020(b) is amended to read:

15 (b) Except as limited in AS 12.55.120, the [THE] court of appeals has  
16 jurisdiction to hear appeals of unsuspended sentences of imprisonment exceeding two  
17 years for a felony offense or 120 days for a misdemeanor offense imposed by the  
18 superior court on the grounds that the sentence is excessive, or a sentence of any  
19 length on the grounds that it is too lenient. The court of appeals [AND], in the  
20 exercise of this jurisdiction, may modify the sentence as provided by law and the state  
21 constitution.

22 \* Sec. 11. AS 22.07.020(c) is amended to read:

23 (c) The court of appeals has jurisdiction to review (1) a final decision of the  
24 district court in an action or proceeding involving criminal prosecution, post-conviction  
25 relief, extradition, probation and parole, habeas corpus, or bail; and (2) the final  
26 decision of the district court on a sentence imposed by it if the sentence exceeds 120  
27 days of unsuspended incarceration for a misdemeanor offense. In this subsection,  
28 "final decision" means a decision or order, other than dismissal by consent of all  
29 parties, that closes a matter in the district court.

30 \* Sec. 12. AS 22.10.020(f) is amended to read:

31 (f) An appeal to the superior court may be taken on the ground that an

1 unsuspended [A] sentence of imprisonment exceeding 120 [OF 90] days [OR MORE]  
2 was excessive and the superior court in the exercise of this jurisdiction has the power  
3 to reduce the sentence. The state may appeal a sentence on the ground that it is too  
4 lenient. When a sentence is appealed on the ground that it is too lenient, the court  
5 may not increase the sentence but may express its approval or disapproval of the  
6 sentence and its reasons in a written opinion.

7 \* Sec. 13. AS 33.30 is amended by adding a new section to read:

8 Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a)

9 A prisoner may obtain judicial review by the superior court of a final disciplinary  
10 decision by the department only if the prisoner alleges specific facts establishing a  
11 violation of the prisoner's fundamental constitutional rights that prejudiced the  
12 prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner  
13 filing a notice of appeal and other required documents in accordance with AS 09.19  
14 and the applicable rules of court governing administrative appeals that do not conflict  
15 with AS 09.19. Unless the appeal is not accepted for filing under AS 09.19.010 or is  
16 dismissed under AS 09.19.020, a record of the proceedings shall be prepared by the  
17 department, consisting of the original papers and exhibits submitted in the disciplinary  
18 process and a cassette tape of the disciplinary hearing. The record shall be prepared  
19 and transmitted in accordance with the applicable rules of court governing  
20 administrative appeals.

21 (b) A disciplinary decision may not be reversed

22 (1) unless the court finds that the prisoner's fundamental constitutional  
23 rights were violated in the course of the disciplinary process, and that the violation  
24 prejudiced the prisoner's right to a fair adjudication;

25 (2) because the department failed to follow hearing requirements set out  
26 in state statutes and regulations, unless the prisoner was prejudiced by the denial of a  
27 right guaranteed by the Alaska Constitution or United States Constitution; if such  
28 prejudice is found, the court shall enter judgment as provided in (c) of this section and  
29 remand the case to the department; or

30 (3) because of insufficient evidence if the record described in (a) of this  
31 section shows that the disciplinary decision was based on some evidence that could

1 support the decision reached.

2 (c) The court shall enter judgment setting aside or affirming the disciplinary  
3 decision without limiting or controlling the discretion vested in the department to  
4 allocate resources within the department and to control security and administration  
5 within the prison system.

6 \* Sec. 14. AS 33.32.060 is amended to read:

7 Sec. 33.32.060. LIMITATION ON ATTACHMENT, ETC., OF WAGES.  
8 Except for execution by the state under AS 09.38.030(f), only [ONLY] the prisoner  
9 payments retained by the commissioner of corrections under AS 33.32.050(d) are  
10 subject to lien, attachment, garnishment, execution, or similar procedures to encumber  
11 funds or property.

12 \* Sec. 15. Rule 10, Alaska Administrative Rules of Court, is amended by adding a new  
13 subsection to read:

14 (e) The provisions of this rule do not apply to an exemption from payment of  
15 filing fees in litigation against the state. In this subsection, "litigation against the state"  
16 has the meaning given in AS 09.19.100.

17 \* Sec. 16. Rule 204(b), Alaska Rules of Appellate Procedure, is amended to read:

18 (b) Appeal -- How Taken. A party may appeal from a final order or judgment  
19 by filing a notice of appeal with the clerk of the appellate courts. The notice of appeal  
20 must identify the party taking the appeal, the final order or judgment appealed from,  
21 and the court to which the appeal is taken. The notice of appeal must be accompanied  
22 by

23 (1) a completed docketing statement in the form prescribed by these  
24 rules;

25 (2) a copy of the final order or judgment from which the appeal is  
26 taken;

27 (3) a statement of points on appeal as required by Rule 204(e);

28 (4) unless the party is represented by court-appointed counsel, [OR] the  
29 party is the state or an agency thereof, or the party is a prisoner whom the court  
30 finds is eligible to pay less than full fees under AS 09.19.010,

31 (A) the filing fee required by Administrative Rule 9(a);

- 1 (B) a motion for waiver of filing fee pursuant to Administrative  
2 Rule 9(f)(1); or
- 3 (C) a motion to appeal at public expense pursuant to Rule 209;  
4 (5) unless the party is represented by court-appointed counsel, the party  
5 is the state, municipality, or officer or agency thereof, or the party is an employee  
6 appealing denial of compensation by the Alaska Workers' Compensation Board or  
7 denial of benefits under AS 23.20 (Employment Security Act),
- 8 (A) the cost bond or deposit required by Rule 204(c)(1);  
9 (B) a copy of a superior court order approving the party's  
10 supersedeas bond or other security in lieu of bond or a copy of the party's  
11 motion to the superior court for approval of a supersedeas bond or other  
12 security;
- 13 (C) a motion for waiver of cost bond; or  
14 (D) a motion to appeal at public expense pursuant to Rule 209;
- 15 (6) a designation of transcript if the party intends to have portions of  
16 the electronic record transcribed pursuant to Rule 210(b); and
- 17 (7) proof of service of the notice of appeal and all required  
18 accompanying documents, except the filing fee, on
- 19 (A) the clerk of the trial court which entered the judgment or  
20 order being appealed; and  
21 (B) all other parties to the trial court action.

22 A party may move for an extension of time to file the docketing statement, the  
23 statement of points on appeal, and the designation of transcript. The clerk of the  
24 appellate courts shall refuse to accept for filing any notice of appeal not conforming  
25 to this paragraph and accompanied by the items specified in (1) - (7) or a motion to  
26 extend the time for filing item (1), (3), or (6).

27 \* Sec. 17. Rule 208, Alaska Rules of Appellate Procedure, is repealed and reenacted to  
28 read:

29 **RULE 208. CUSTODY OF PRISONERS IN POST-CONVICTION RELIEF**  
30 **PROCEEDINGS.** (a) Release of Applicant Pending Review of Order Denying  
31 Release. The court having jurisdiction over the appeal of a denial of an application

1 for post-conviction relief may not grant bail or release the applicant pending appeal.  
2 If the appellate court determines that post-conviction relief should be granted, the case  
3 shall be remanded to the trial court for a bail hearing.

4 (b) Release of Applicant Pending Review of Decision Ordering a New Trial.

5 If an appeal of an order granting an applicant a new trial is pending, Appellate Rule  
6 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes  
7 conditions of release pending appeal.

8 \* **Sec. 18.** Rule 209(a), Alaska Rules of Appellate Procedure, is amended by adding a new  
9 paragraph to read:

10 (7) The provisions of this subsection do not apply to the filing fees in  
11 a prisoner's appeal against the state or an officer, agent, employee, or former officer,  
12 agent, or employee of the state that is governed by the provisions of AS 09.19.

13 \* **Sec. 19.** Rule 215(a), Alaska Rules of Appellate Procedure, is repealed and reenacted to  
14 read:

15 (a) Notification of Right to Appeal Sentence. At the time of imposition of a  
16 sentence of more than two years of unsuspended incarceration for a felony offense, or  
17 more than 120 days of unsuspended incarceration for a misdemeanor offense, the judge  
18 shall inform the defendant that

19 (1) if the sentence was

20 (A) imposed in accordance with a plea agreement under  
21 Criminal Rule 11, the defendant may appeal as excessive only the part of the  
22 sentence that exceeds the minimum sentence provided for in the plea  
23 agreement; or

24 (B) not imposed in accordance with a plea agreement, the  
25 defendant may appeal the sentence on the ground that it is excessive;

26 (2) upon an appeal of the sentence, the appellate court may reduce or  
27 increase the sentence and that, by appealing the sentence under this rule, the defendant  
28 waives the right to plead that by a revision of the sentence resulting from the appeal  
29 the defendant has been twice placed in jeopardy for the same offense; and

30 (3) if the defendant wants counsel and is unable to pay for the services  
31 of an attorney, the court will appoint an attorney to represent the defendant on the

1 appeal.

2 \* Sec. 20. Rule 521, Alaska Rules of Appellate Procedure, is amended to read:

3 RULE 521. CONSTRUCTION. These rules are designed to facilitate business  
4 and advance justice. They may be relaxed or dispensed with by the appellate courts  
5 where a strict adherence to them will work surprise or injustice. In a matter  
6 involving the validity of a criminal conviction or sentence, this rule does not  
7 authorize an appellate court or the superior court, when acting as an intermediate  
8 appellate court, to allow

9 (1) an appeal to be filed more than 60 days late; or

10 (2) a petition for review or petition for hearing to be filed more  
11 than 30 days late.

12 \* Sec. 21. Rule 603(a), Alaska Rules of Appellate Procedure, is amended by adding a new  
13 paragraph to read:

14 (6) Stay in Prisoner Disciplinary Appeals. The court may not stay  
15 imposition of sanctions arising from a disciplinary decision of the Department of  
16 Corrections unless the court finds that the prisoner has alleged a violation of a  
17 fundamental constitutional right and is likely to succeed on the merits of the appeal,  
18 that the prisoner faces irreparable harm if a stay is not granted, that the Department  
19 of Corrections can be adequately protected if a stay is granted, and that a stay will not  
20 adversely affect the public interest in effective penal administration. In evaluating the  
21 stay motion, the court may consider documents and affidavits offered by either party,  
22 and shall consider the stay motion without waiting for the record to be prepared.

23 \* Sec. 22. Rule 604(b)(1)(A), Alaska Rules of Appellate Procedure, is amended to read:

24 (A) The record on appeal consists of the original papers and  
25 exhibits filed with the administrative agency, and a typed transcript of the  
26 record of proceedings before the agency. In an appeal from the revocation of  
27 a driver's license by the Division of Motor Vehicles or from a prisoner  
28 disciplinary decision of the Department of Corrections, the record of  
29 proceedings will include cassettes rather than transcripts unless otherwise  
30 ordered by the court.

31 \* Sec. 23. Rule 11(c), Alaska Rules of Criminal Procedure, is amended by adding a new

1 paragraph to read:

2 (4) in cases when a plea agreement has been accepted by a court,  
3 informing the defendant:

4 (i) that the defendant waives the right to appeal a  
5 sentence as excessive and waives the right to seek reduction of a  
6 sentence under Criminal Rule 35 if a plea agreement between the  
7 defendant and the prosecuting attorney provides for a specific sentence  
8 or a sentence equal to or less than a specified maximum; and

9 (ii) that the defendant waives the right to appeal as  
10 excessive that portion of a sentence that is less than or equal to a  
11 minimum sentence specified in a plea agreement between the defendant  
12 and the prosecuting attorney and waives the right to seek reduction of  
13 a sentence under Criminal Rule 35 to a length less than the length of  
14 the minimum sentence.

15 \* Sec. 24. Rule 11(e)(3), Alaska Rules of Criminal Procedure, is amended to read:

16 (3) Acceptance of Plea. If the court accepts the plea agreement, the  
17 court shall inform the defendant that the judgment and sentence will embody  
18 [EITHER] the disposition provided for in the plea agreement [OR ANOTHER  
19 DISPOSITION MORE FAVORABLE TO THE DEFENDANT].

20 \* Sec. 25. Rule 11(e)(4), Alaska Rules of Criminal Procedure, is amended to read:

21 (4) Rejection of Plea. If the court rejects the plea agreement, the court  
22 shall inform the parties of this fact and advise the defendant personally in open court  
23 that the court and the prosecuting attorney are [IS] not bound by the plea agreement.  
24 The court shall then afford the defendant the opportunity to withdraw the plea, and  
25 advise the defendant that if the defendant persists in the plea of guilty or nolo  
26 contendere, the disposition of the case may be less favorable to the defendant than that  
27 contemplated by the plea agreement.

28 \* Sec. 26. Rule 11(h)(1), Alaska Rules of Criminal Procedure, is amended to read:

29 (1) The court shall allow the defendant to withdraw a plea of guilty or  
30 nolo contendere whenever the defendant, upon a timely motion for withdrawal filed  
31 before the imposition of sentence, proves that withdrawal is necessary to correct

1 manifest injustice.

2 (i) A motion for withdrawal is untimely [TIMELY] and is  
3 [NOT] barred if [BECAUSE] made subsequent to judgment or sentence [IF IT  
4 IS MADE WITH DUE DILIGENCE]. After imposition of sentence, the  
5 withdrawal of a plea may be sought only under AS 12.72.

6 (ii) Withdrawal is necessary to correct a manifest injustice  
7 whenever it is demonstrated that:

8 (aa) The defendant was denied the effective assistance  
9 of counsel guaranteed by constitution, statute, or rule, or

10 (bb) The plea was not entered or ratified by the  
11 defendant or a person authorized to act in the defendant's behalf, or

12 (cc) The plea was involuntary, or was entered without  
13 knowledge of the charge or that the sentence actually imposed could be  
14 imposed, or

15 (dd) The defendant did not receive the charge or  
16 sentence concessions contemplated by the plea agreement, and

17 (A) the prosecuting attorney failed to seek or  
18 opposed the concessions promised in the plea agreement, or

19 (B) after being advised that the court no longer  
20 concurred and after being called upon to affirm or withdraw the  
21 plea, the defendant did not affirm the plea.

22 (iii) The defendant may move for withdrawal of the plea  
23 without alleging innocence of the charge to which the plea has been entered.

24 \* Sec. 27. Rule 33, Alaska Rules of Criminal Procedure, is amended to read:

25 RULE 33. NEW TRIAL. (a) Grounds. The court may grant a new trial to  
26 a defendant if required in the interest of justice. The court may not grant a new  
27 trial to a defendant on the ground that the jury's verdict is contrary to the weight  
28 of the evidence.

29 (b) Subsequent Proceedings. If trial was by the court without a jury, the  
30 court may vacate the judgment if entered, take additional testimony, and enter a new  
31 judgment.

1           (c) Time for Motion. A motion for a new trial based on the ground of newly  
2 discovered evidence may be made only before or within 180 days [TWO YEARS]  
3 after final judgment, but if an appeal is pending the court may grant the motion only  
4 on remand of the case. A motion for a new trial based on any other grounds shall be  
5 made within 5 days after verdict or finding of guilt, or within such further time as the  
6 court may fix during the 5-day period.

7       \* Sec. 28. Rule 35(a), Alaska Rules of Criminal Procedure, is repealed and reenacted to  
8 read:

9           (a) Correction of Sentence. The court may correct an illegal sentence at any  
10 time.

11       \* Sec. 29. Rule 35(b), Alaska Rules of Criminal Procedure, is repealed and reenacted to  
12 read:

13           (b) Modification or Reduction of Sentence. The court

14                   (1) may modify or reduce a sentence within 60 days of the distribution  
15 of the written judgment upon a motion made in the original criminal case;

16                   (2) may not entertain a second or successive motion for similar relief  
17 brought under this paragraph on behalf of the same defendant;

18                   (3) may not reduce or modify a sentence so as to impose a term of  
19 imprisonment that is less than the minimum required by law;

20                   (4) may not reduce a sentence imposed in accordance with a plea  
21 agreement between the defendant and the prosecuting attorney that provided for  
22 imposition of a specific sentence or a sentence equal to or less than a specified  
23 maximum; and

24                   (5) may not reduce a sentence below the minimum specified in a plea  
25 agreement between the defendant and the prosecuting attorney.

26       \* Sec. 30. Rule 35.1(a), Alaska Rules of Criminal Procedure, is amended to read:

27           (a) Scope. Any person who has been convicted of, or sentenced for, a crime  
28 may institute a proceeding for post-conviction relief under AS 12.72.010 -  
29 12.72.040 if the person [AND WHO] claims:

30                   (1) that the conviction or the sentence was in violation of the  
31 constitution of the United States or the constitution or laws of Alaska;

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

2 (3) that a prior conviction has been set aside and the prior  
3 conviction was used as a statutorily required enhancement of [THAT] the sentence  
4 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS  
5 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY  
6 LAW];

7 (4) that there exists evidence of material facts, not previously presented  
8 and heard, that requires vacation of the conviction or sentence in the interest of justice;

9 (5) that the applicant's [HIS] sentence has expired, that the  
10 applicant's [HIS] probation, parole, or conditional release has [HAVE] been  
11 unlawfully revoked, or that the applicant [PERSON] is otherwise unlawfully held in  
12 custody or other restraint;

13 (6) that the conviction or sentence is otherwise subject to collateral  
14 attack upon any ground or alleged error heretofore available under any common law,  
15 statutory or other writ, motion, petition, proceeding, or remedy; [OR]

16 (7) that

17 (A) there has been a significant change in law, whether  
18 substantive or procedural, applied in the process leading to the applicant's  
19 conviction or sentence;

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

22 (C) it is appropriate to retroactively apply the change in law  
23 because the change in law requires observance of procedures without  
24 which the likelihood of an accurate and fair conviction is seriously  
25 diminished; and

26 (D) the failure to retroactively apply the change in law  
27 would result in a fundamental miscarriage of justice, which is established  
28 by demonstrating that, had the change in law been in effect at the time of  
29 the applicant's trial, a reasonable trier of fact would have a reasonable  
30 doubt as to the guilt of the applicant;

31 (8) that the applicant should be allowed to withdraw a plea of

1 guilty or nolo contendere in order to correct manifest injustice as set out in  
2 Criminal Rule 11(h)(1)(ii); or

3 (9) that the applicant was not afforded effective assistance of  
4 counsel at trial or on direct appeal [, WHEN SUFFICIENT REASONS EXIST TO  
5 ALLOW RETROACTIVE APPLICATION OF THE CHANGED LEGAL  
6 STANDARDS; MAY INSTITUTE A PROCEEDING UNDER THIS RULE TO  
7 SECURE RELIEF].

8 \* Sec. 31. Rule 35.1(c), Alaska Rules of Criminal Procedure, is amended to read:

9 (c) Commencement of Proceedings -- Filing -- Service. A proceeding is  
10 commenced by filing an application with the clerk at the court location where the  
11 underlying criminal case is filed [OF THE COURT IN WHICH THE CONVICTION  
12 OCCURRED]. Application forms will be furnished by the clerk of court. An  
13 application must [MAY] be filed within the [AT ANY] time limitations set out in  
14 AS 12.72.020. The clerk shall open a new file for the application, promptly bring it  
15 to the attention of the court and give a copy to the district attorney.

16 \* Sec. 32. Rule 35.1(d), Alaska Rules of Criminal Procedure, is amended to read:

17 (d) Application -- Contents. The application shall (1) identify the proceedings  
18 in which the applicant was convicted, (2) state the date shown in the clerk's certificate  
19 of distribution on the judgment complained of, (3) state the sentence complained of  
20 and the date of sentencing, (4) specifically set forth the grounds upon which the  
21 application is based, and (5) clearly state the relief desired. If the application  
22 challenges a Department of Corrections or Board of Parole decision, the  
23 application shall (1) identify the specific nature of the proceedings or challenged  
24 decision. (2) state the date of the proceedings or decision, (3) specifically set forth  
25 the facts and legal grounds upon which the application is based, and (4) clearly  
26 state the relief desired. Facts within the personal knowledge of the applicant shall  
27 be set out [FORTH] separately from other allegations of facts and shall be under oath.  
28 Affidavits, records, or other evidence supporting its allegations shall be attached to the  
29 application or the application shall recite why they are not attached. The application  
30 shall identify all previous proceedings, together with the grounds therein asserted,  
31 taken by the applicant to secure relief from the conviction or sentence including any

1 previous applications for post-conviction relief. Argument, citations and discussion  
2 of authorities are unnecessary. Applications which are incomplete shall be returned  
3 to the applicant for completion.

4 \* Sec. 33. Rule 35.1(e), Alaska Rules of Criminal Procedure, is amended to read:

5 (e) Indigent Applicant.

6 (1) If the applicant is indigent, filing fees shall be paid under the  
7 provisions of AS 09.19 and [, TRANSCRIPT AND OTHER COURT COSTS SHALL  
8 BE BORNE BY THE STATE. WHERE THE COURT DETERMINES THAT THE  
9 APPLICATION SHALL NOT BE SUMMARILY DISPOSED OF ON THE  
10 PLEADINGS AND RECORD PURSUANT TO SUBDIVISION (f) OF THIS RULE,  
11 BUT THAT THE ISSUE RAISED BY THE APPLICATION REQUIRE AN  
12 EVIDENTIARY HEARING,] counsel shall be appointed consistent with AS 18.85.100  
13 to assist the applicant [INDIGENT APPLICANTS].

14 (2) Within 60 days of court appointment under (e)(1) of this rule,  
15 counsel shall file with the court and serve on the prosecuting attorney

16 (A) an amended application or a notice that counsel will  
17 proceed on the grounds alleged in the application filed by the applicant;

18 or

19 (B) a certificate that counsel

20 (i) does not have a conflict of interest;

21 (ii) has completed a review of the facts and law in the  
22 underlying proceeding or action challenged in the application;

23 (iii) has consulted with the applicant and, if  
24 appropriate, with trial counsel; and

25 (iv) has determined that the application does not  
26 allege a colorable claim for relief.

27 \* Sec. 34. Rule 35.1(f)(1), Alaska Rules of Criminal Procedure, is amended to read:

28 (1) The state shall file an answer or a motion within 45 days of  
29 service of an original, amended, or supplemental application filed by counsel or  
30 by an applicant who elects to proceed without counsel, or of a notice of intent to  
31 proceed on the original application under (e)(2)(A) of this rule. The applicant

1 shall have 30 days to file an opposition, and the state shall have 15 days to file a  
2 reply. The motion, opposition, and reply may be supported by affidavit.

3 [WITHIN 30 DAYS AFTER THE FILING OF THE APPLICATION, OR WITHIN  
4 SUCH FURTHER TIME AS THE COURT MAY FIX, THE STATE SHALL  
5 RESPOND BY ANSWER OR BY MOTION WHICH MAY BE SUPPORTED BY  
6 AFFIDAVITS.] At any time prior to entry of judgment the court may grant leave to  
7 withdraw the application. The court may make appropriate orders for amendment of  
8 the application or any pleading or motion, for pleading over, for filing further  
9 pleadings or motions, or for extending the time of the filing of any pleading. In  
10 considering a pro se [THE] application the court shall consider substance and  
11 disregard defects of form, but a pro se applicant will be held to the same burden  
12 of proof and persuasion as an applicant proceeding with counsel. If the application  
13 is not accompanied by the record of the proceedings challenged therein, the respondent  
14 may [SHALL] file with its answer the record or portions thereof that are material to  
15 the questions raised in the application.

16 \* Sec. 35. Rule 35.1(f)(2), Alaska Rules of Criminal Procedure, is amended to read:

17 (2) If appointed counsel has filed a certificate under (e)(2)(B) of this rule,  
18 and it appears to the court that the applicant is not entitled to relief, the court  
19 shall [WHEN A COURT IS SATISFIED, ON THE BASIS OF THE APPLICATION,  
20 THE ANSWER OR MOTION, AND THE RECORD, THAT THE APPLICANT IS  
21 NOT ENTITLED TO POST-CONVICTION RELIEF AND NO PURPOSE WOULD  
22 BE SERVED BY ANY FURTHER PROCEEDINGS, IT MAY] indicate to the parties  
23 its intention to permit counsel to withdraw and dismiss the application and its  
24 reasons for so doing. The applicant and the prosecuting attorney shall be given an  
25 opportunity to reply to the proposed withdrawal and dismissal. If the applicant files  
26 a response and the court finds that the application does not present a colorable  
27 claim, or if the applicant does not file a response, the court shall permit counsel  
28 to withdraw and [IN LIGHT OF THE REPLY, OR ON DEFAULT THEREOF, THE  
29 COURT MAY] order the application dismissed. If the court finds that the  
30 application presents a colorable claim, the court may [OR] grant leave to file an  
31 amended application or direct that the proceedings otherwise continue.

1 [DISPOSITION ON THE PLEADINGS AND RECORD SHALL NOT BE MADE  
2 WHEN A MATERIAL ISSUE OF FACT EXISTS.]

3 \* Sec. 36. Rule 35.1(g), Alaska Rules of Criminal Procedure, is amended to read:

4 (g) Hearing -- Evidence -- Order. The application shall be heard in, and  
5 before any judge of, the court in which the underlying criminal case is filed  
6 [CONVICTION TOOK PLACE]. An electronic recording of the proceeding shall be  
7 made. All rules and statutes applicable in civil proceedings, including pre-trial and  
8 discovery procedures are available to the parties except that Alaska Rule of Civil  
9 Procedure 16.1 does not apply to post-conviction relief proceedings. The court  
10 may receive proof by affidavits, depositions, oral testimony, or other evidence. The  
11 applicant bears the burden of proving all factual assertions by clear and  
12 convincing evidence. The court may order the applicant brought before it for the  
13 hearing or allow the applicant to participate telephonically or by video  
14 conferencing. If the court finds in favor of the applicant, it shall enter an appropriate  
15 order with respect to the conviction or sentence in the former proceedings, and any  
16 supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction  
17 of sentence, or other matters that may be necessary and proper. The court shall make  
18 specific findings of fact, and state expressly its conclusions of law, relating to each  
19 issue presented. The order made by the court is a final judgment.

20 \* Sec. 37. Alaska Rule of Criminal Procedure 35.1(h) is repealed.

21 \* Sec. 38. Notwithstanding any other provision of this Act, a person whose conviction was  
22 entered before July 1, 1994, has until July 1, 1996, to file a claim under AS 12.72.

23 \* Sec. 39. (a) Section 1 of this Act has the effect of amending

24 (1) Alaska Rule of Civil Procedure 3, by providing that a prisoner may not  
25 commence litigation against the state until the prisoner has paid the filing or obtained an  
26 exemption from those fees;

27 (2) Alaska Rule of Civil Procedure 16.1, by providing that the automatic  
28 disclosures of that rule do not apply to litigation against the state by a prisoner;

29 (3) Alaska Rule of Civil Procedure 65, by restricting the availability of  
30 injunctive relief in litigation against the state by a prisoner;

31 (4) Alaska Rules of Appellate Procedure 204 and 403, by altering the

1 procedure for appeals and petitions for review in litigation by the state by prisoners; and  
2 (5) Alaska Rule of Appellate Procedure 603, by restricting the availability of  
3 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department  
4 of Corrections.

5 (b) In this section, "prisoner" and "litigation against the state" have the meanings  
6 given in AS 09.19.100, added by sec. 1 of this Act.

7 \* Sec. 40. Sections 1 - 14 and 38 of this Act take effect only if secs. 15 - 37 and 39 of this  
8 Act take effect.

9 \* Sec. 41. If this Act takes effect, it takes effect July 1, 1995.

NO OBJ

9-GH0028\O.2 ✓  
Luckhaupt  
4/22/95

AMENDMENT | ADOPTED

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 201( ), Draft "O" version, dated 4/20/95

- 1 Page 15, line 9:
- 2       Delete "an"
- 3       Insert "the notice of"
  
- 4 Page 15, line 11:
- 5       Delete "30"
- 6       Insert "60"

adopted No OBJ

AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 201( ), draft, version "O", dated 4/20/95

- 1 Page 18, line 14:
- 2 Delete "60"
- 3 Insert "120"

ADOPTED NO OBJ

AMENDMENT 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 201( ), Draft "O" version, dated 4/20/95

- 1 Page 23, line 10:
- 2 Delete "**The**"
- 3 Insert "Unless otherwise required by statute or constitution, the"

custody or admitted to bail, to answer the new indictment or information, if one be found or filed. If the evidence shows the defendant to be guilty of another crime than that charged in the indictment or information, the defendant must in like manner be committed or held thereon, and in neither case is the verdict a bar to another action for the same crime.

(c) **Discharge of Defendant.** If no evidence appears sufficient to charge the defendant with any crime, the defendant must, if in custody, be discharged, or, if the defendant has given bail or deposited money in lieu thereof, the bail is exonerated or the money must be refunded to the defendant, and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment or information was founded. (Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963; and by SCO 1153 effective July 15, 1994)

Annotations

Cases

A motion in arrest of judgment raises only objections which appear on the face of the record. *State v. Adkerson*, Op. No. 294, 403 P2d 673 (Alaska 1965).

A motion to dismiss an indictment on the grounds that it did not charge an offense which was filed after the verdict was returned, was treated as a motion in arrest of judgment. *State v. Adkerson*, Op. No. 294, 403 P2d 673 (Alaska 1965).

Trial court was correct in granting motions in arrest of judgment where appellees had been charged in the indictment and were found guilty of the offenses of procuring a female for an immoral purpose "to appear in a lewd show" and of transporting a female for an immoral purpose "to appear in a lewd show" and an analysis of AS 11.40.330 and of AS 11.40.350 impelled the conclusion that a "lewd show" was not within the prohibitions of this statute. *State v. Adkerson*, Op. No. 294, 403 P2d 673 (Alaska 1965).

PART VII. JUDGMENT

**Rule 35. Reduction, Correction or Suspension of Sentence.**

(a) **Correction or Reduction of Sentence.** The court may correct an illegal sentence at any time. The court may reduce a sentence within 120 days of the day it is imposed. If the defendant takes an appeal, and the judgment is affirmed or the appeal is dismissed, the court also may reduce a sentence within 120 days of the day on which jurisdiction over the case is returned to the trial court under Appellate Rule 507(b), unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief.

(b) **Modification or Reduction of Sentence — Changed Conditions or Circumstances.** The court may modify or reduce a sentence at any time during a term of imprisonment if it finds that conditions or

circumstances have changed since the original sentencing hearing such that the purposes of the original sentence are not being fulfilled.

(1) The sentencing court is not required to entertain a second or successive motion for similar relief brought under this paragraph on behalf of the same petitioner.

(2) No sentence may be reduced or modified so as to result in a term of imprisonment which is less than the minimum required by law.

(3) A motion made under this paragraph must be made in the original criminal case.

(c) The victim may comment on motions made under this rule as follows:

(1) When an individual convicted of a crime against a person or arson in the first degree files a motion to modify or reduce a sentence, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or briefing deadline to enable the department to notify the victim, as directed by AS 12.55.088(c).

(2) The court shall provide copies of the victim's comments to the prosecuting attorney and to the person filing the motion to reduce or modify a sentence, or the person's attorney.

(3) The court shall consider the comments of the victim when relevant, and any response offered by the prosecuting attorney or the person filing the motion, in deciding whether to reduce or modify a sentence.

(4) If more than one person who qualifies as a victim under paragraph (d)(2) of this rule requests the opportunity to exercise rights under this paragraph, the court shall allow the person designated under AS 12.55.172 to exercise those rights, or if a person has not been designated under AS 12.55.172, the court shall designate one person for purposes of exercising rights under this paragraph.

(d) In this rule,

(1) "crime against a person" has the meaning given in AS 33.30.901; and

(2) "victim" has the meaning given in AS 12.55.185.

(Adopted by SCO 4 October 4, 1959; amended by SCO 30 effective February 1, 1961; amended by SCO 49 effective January 1, 1963; by SCO 98 effective September 16, 1968; by SCO 319 effective August 16, 1978; by SCO 426 effective August 1, 1980; by SCO 477 effective August 17, 1981; by SCO 554 effective April 4, 1983; and by SCO 644 effective September 15, 1985; by SCO 822 effective August 1, 1987; by SCO 974 effective January 15, 1990; and by SCO 979 effective August 28, 1989)

NOTE: Paragraphs (c) and (d) of Criminal Rule 35 were added by ch. 59, § 28, SLA 1989.

NOTE: Ch. 79 § 25 SLA has the effect of amending legislation added AS 12.55.125(a) to apply sentence after serving one consideration of good time

Cross

(b) CROSS REFER  
(c) CROSS REFER  
12.55.090

A.

Cases

- I. In General
- II. Correction of Illegal
- III. Reduction or Vacat  
A. In General  
B. Specific Grounds
- IV. Procedure
- V. Time Limits

I. In General

Criminal Rule 53, on rule. *Thomas v. State*, O 1977).

Criminal Rule 35(a) vehicle to seek relief as to tions or the civil rights c 1668, 584 P2d 38 (Alaska

Where defendant rece same day sentence was pr which apparently relied sentence within 120 day defendant's request for a the error was harmless. P: 850 (Alaska App. 1983).

Prisoner's claims that i mandated rehabilitation Corrections was not appro ing brought pursuant to th 894, 767 P2d 203 (Alaska

II. Correction of Illegal

Where a defendant c served half of an illegal remand the case for im maximum punishment the son v. City of Anchorage. 1962).

A sentence is illegal v . (a) if it is rendered i Shagloak v. State, Op. 1978).

The term "illegal sen sentences which the judgn not to sentences illegally consideration of matters does it authorize a collat

# ALASKA CIVIL LIBERTIES UNION

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*An Affiliate of the American Civil Liberties Union*  
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April 7, 1995

The Honorable Brian Porter  
Chair, Judiciary Committee  
Alaska State House of Representatives  
State Capitol Building, Room 118  
Juneau, AK 99801-1182

Re: House Bill 201

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AkCLU) to express concerns about House Bill 201 which is currently pending before the House Judiciary Committee.

This bill is lengthy and complicated so, for purposes of clarity, I will address my comments to specific sections of the bill. The overall intention of the bill is to limit access to post-conviction relief proceedings. The AkCLU is concerned that these restrictions may eliminate the ability of innocent persons to seek relief against wrongful convictions. Several of the provisions are unnecessarily draconian and will ultimately prove to severely restrict the rights of Alaskans. We oppose adoption of the bill because the overall result of the bill will be to eliminate access to the courts and potentially compromise due process rights of Alaskans.

Section 1 of the bill, which sets forth the procedure to use for seeking a waiver of fees, is very complicated and will result in severely limiting access to the court system. Many indigent persons who are incarcerated are either illiterate or do not speak English, or both. The proposed procedure is complicated and would require the appointment of an attorney to ensure that everyone who needs access to the courts can have it. The result of this section will be that indigent persons with worthy claims will be unable to file the claims because they will not be able to decipher the complicated procedure for seeking a waiver of the filing fees. If a person is unable to access the courts with claims of constitutional magnitude, a denial of constitutionally protected due process will occur.

This entire section should be deleted or simpler procedures drafted. For example, the court should automatically waive filing fees for any inmate who had previously qualified for public

defender services, having already established indigency under Alaska law. However, if the inmate has obtained money since incarceration, the court should be able to access the inmate's prison account to pay the filing fee.

Sections 7, 10 and 11 of HB 201 set out limitations on a defendant's right to appeal his or her sentence. The current law provides that any person sentenced to 45 days or more of unsuspended time may appeal his sentence. The proposed bill would raise the minimum allowable time to 120 days for a misdemeanor or two years for a felony.

The AkCLU strenuously objects to this change. Our position is that appellate review of sentences set by lower courts should be liberally granted. Two years is an extremely long time for most persons to serve in jail. Allowing judges to impose sentences of up to two years without the right of review is very dangerous. It is particularly surprising that the Legislature is willing in this bill to consider allowing judges such liberal sentencing authority, given that the Alaska Legislature has adopted presumptive sentencing laws to ensure uniformity in sentencing and to protect persons against precisely the types of judicial abuses of discretion that these new provisions would allow. Allowing this expanded judicial discretion is contrary to the espoused rationale underlying presumptive sentencing.

Sections 8 and 9 seek to limit access to post-conviction relief proceedings. We oppose proposed sec. 12.72.020(a)(1), which would exclude any claims based on the admission or exclusion of evidence at trial. A person could be severely prejudiced by inadmissible evidence or by failure to admit important evidence. This major area of post-conviction relief should not be denied to a defendant. To deny applicants the right to raise such claims could result in an unconstitutional denial of due process. We also oppose proposed 12.72.040 of Section 8, which would raise the burden of proof to clear and convincing evidence.

We are further opposed to the language of Section 9, which would deny legal representation to a person who makes a successive claim for post-conviction relief. See proposed AS 18.85.100(c). It is not unusual for wrongful convictions to be discovered after successive applications for post-conviction relief. We are particularly concerned that the opportunity for post-conviction relief not be limited if Alaska adopts either of the pending death penalty bills which have been proposed. See HB 45 and SB 52. Nationwide, there are dozens of examples of innocent persons who would have been wrongfully executed by a state had those persons been limited to only one application for post-conviction relief.

Further, the AkCLU believes that it is crucial that defendant's be provided legal representation to seek habeas corpus relief in federal court. However, defendants are usually represented by the Federal Public Defender Agency when seeking habeas relief and would probably not be affected by this section of the proposed bill.

Section 19 of HB 201 seeks to limit the amount of time a defendant has to file an appeal. We strenuously oppose an absolute time limit which is inflexible. A defendant's liberty rights should not depend on whether his or her lawyer was able to file a timely appeal. Most defendants are represented by attorneys who are able to file timely appeals. However, in those cases of attorney error, it is necessary to provide flexibility in the interest of justice so that a defendant's appeal rights are protected.

Section 26 seeks to eliminate a judge's ability to set aside a jury verdict. A judge should be entitled to grant a new trial when he or she believes there is insufficient evidence to support a conviction. A judge rarely uses this power; however, it is a necessary power to avoid the prejudice which sometimes comes from an unfair jury verdict which is not supported by the evidence. One must ask: what is the motive behind this attempt to amend present language, language that clearly acts to provide a balance against the potential of biased juries? This section of the bill is highly suspect.

We further oppose limiting the time for filing a motion for a new trial to 180 days. The best way to ensure that the justice system works fairly is to provide for liberal measures to make corrections. There is no reason to limit this section to 6 months. Again, we are particularly concerned about the ramifications of this change if Alaska were to pass death penalty legislation. The experience of defendants in other states has demonstrated that new evidence, such as the discovery of perjured testimony or recanting witnesses, often comes years -- not days or months -- after the conviction.

We are also opposed to the proposed changes to Criminal Rule 35 contained in this bill. Section 28 would limit the amount of time a person has to file a sentence modification to 60 days. This change is unnecessary and harmful. There are a multitude of reasons why a person may seek a sentence modification which could stem from circumstances arising after 60 days. Examples such as family emergencies, health of the inmate, or the inmate successfully completing rehabilitation programs are all valid reasons for seeking sentence modification. To limit the time to 60

Page Four - Representative Brian Porter - April 7, 1995

days effectively eliminates a person's opportunity to apply for a sentence modification. With the state's current fiscal crisis and concomitant difficulty of affording the cost of housing inmates, it makes sense to provide judicial discretion in order to modify the sentences of those inmates who no longer need to be incarcerated.

Finally, we oppose other proposed changes to Criminal Rule 35. Section 32 would amend Rule 35.1 and eliminate the Alaska Rule of Civil Discovery from post-conviction relief proceedings. In the interest of judicial expediency, it is better to provide ample opportunities for discovery. The full and free exchange of information often promotes settlement of claims. It also often eliminates the need to hold court hearings and call witnesses simply because the parties do not know what information the other side has.

While we understand the state's interest in making the courts run as efficiently as possible, this must not be done at the cost of limiting access to the courts. When this happens, all citizens are at risk that they will not be able to get redress when wrongfully convicted. Besides the due process concerns that we have, this bill seriously discriminates against indigent people and poses equal protection problems, as well.

We appreciate your attention to the above stated concerns and ask that you seriously consider the changes we have suggested. The Alaska Civil Liberties Union is strongly opposed to this legislation; we firmly believe many of the HB 201's proposals are a particularly egregious and unconstitutional attack on the due process rights of Alaskans.

Respectfully yours,

Randall P. Burns  
Executive Director

RCK:RFB