

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8600 HOUSE JUDICIARY

HOUSE BILL NO. 188

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES MACKIE, Porter, Phillips, Robinson, Navarre, Green, James, Kubina, Elton

Introduced: 2/20/95

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act creating the crime of indecent viewing and photography."**

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

3 *** Section 1.** AS 11.61 is amended by adding a new section to read:

4 Sec. 11.61.123. **INDECENT VIEWING AND PHOTOGRAPHY.** (a) A
5 person commits the crime of indecent viewing and photography if, in the state, the
6 person knowingly views, or produces a picture of, the private exposure of the genitals,
7 anus, or female breast of another person and the view or production is without the
8 knowledge or consent of

9 (1) the parent or guardian of the person viewed, or who is shown in the
10 picture, if the person who is viewed or shown is under 16 years of age; and

11 (2) the person viewed or shown in the picture, if the person viewed or
12 shown is at least 13 years of age.

13 (b) Each viewing of a person, and each production of a picture of a person
14 whose genitals, anus, or female breast are viewed or are shown in a picture constitutes
15 a separate violation of this section.

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(c) Indecent ^{viewing} photography is a

(1) class C felony if the person viewed or shown in a picture was at the time of the viewing or production of the picture, a minor;

(2) class A misdemeanor if the person viewed or shown in a picture was at the time of the viewing or production of the picture, an adult.

(d) In a prosecution under this section, it is an affirmative defense that the viewing was conducted as a security surveillance system if notice that security viewing is being conducted is posted prominently in the area viewed and the viewing is done by a person of the same sex as the person being viewed. ^{and any viewing or use of pictures produced is done only in the furtherance of crime prevention or prosecution}

(e) In this section,

(1) "picture" means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, or digital format; and

(2) "private exposure" means that a person has exposed ^{magnetic} the person's body or part of the body in a place, and under circumstances, that ^{the person} someone in the person's position would reasonably believe would not result in their being viewed, or ^{part, being (A) viewed by the A, or (B) produced in a picture.} in the production of a picture of the person.

* Sec. 2. APPLICABILITY. This Act applies to all offenses committed on or after the effective date of this Act.

TESTIMONY ON HB 188
HOUSE JUDICIARY COMMITTEE
1:00 PM - MONDAY, FEBRUARY 27, 1995

My name is Morris Ververs. I am the Superintendent of the Klawock City School District. I would like to thank the Chairman and the Committee for the opportunity to share with you an outline of the events that began on January 30, of this year. These events led to our request for help from Representative Mackie and the subsequent drafting of HB 188.

On Monday, January 30 I responded to a student report of the eye of a camera being discovered in the ceiling of the girls locker room of our school gym. That investigation led to the discovery of a video system that allowed for live viewing and video taping from several angles within the girls locker room.

During the police and state trooper investigation, the school dealt with student, and staff reactions by providing as much information as we could without damaging the police investigation of the case. We also provided group counseling for students and staff dealing with violation of trust and violation of privacy issues. A parent meeting was also held to explain the unpleasant circumstances and to provide information on what our school was doing to cope with the circumstances of this event.

There was intense concern, stress, fear, anger and other elements of psychological pain being experienced by students, staff, parents and community. However, at no time during the early stages of this traumatic process was it known that this reprehensible act of indecent viewing and video taping was indeed not a violation of law.

The discovery of this fact was a shock to us as a school district and unbelievable to parents who relied on the law and the school district to provide some measure of legal accountability for the perpetrator of this act.

This led to our request of Representative Mackie to address this issue on behalf of our school district and of all school children in Alaska.

We believe that HB 188 addresses this issue completely and would ensure legal consequences for any act such as the one that occurred in our school. We urge your support of HB Bill 188 and again thank you for the opportunity to share our experience.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 188

- 1 Page 2, line 1, following "Indecent":
- 2 Insert "viewing and"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 188

- 1 Page 2, line 12, following "electronic,":
- 2 Insert "magnetic,"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 188

- 1 Page 2, line 14, following "that", through line 16:
- 2 Delete all material.
- 3 Insert "the person reasonably believed would not result in the person's body or body parts
- 4 being
- 5 (A) viewed by the defendant; or
- 6 (B) produced in a picture."

Page 2, line 14: after "that" delete all material;
Page 2, lines 15 and 16: delete all material and insert the following:

the person reasonably believed would not result
in being viewed by the defendant or produced in
a picture.

③ Security Surveillance

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 188

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act creating the crime of indecent viewing
and photography." BRU: Prosecution
 Component: All
 Sponsor: Representative Mackie
 Requester: Representative Mackie 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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						
TOTAL	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 amends AS 11.61 to create the crime of indecent viewing and photography. Indecent photography would be a class C felony if the person viewed or shown in a picture was at the time of the viewing or production of the picture, a minor. Indecent photography would be a class A misdemeanor if the person viewed or shown in the picture at the time of viewing or production of the picture, an adult. The Department believes that only a small number of offenses will occur annually. Thus, fiscal note costs are not appropriate.

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/23/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/23/95
 Agency: Department of Law

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Alaska State Legislature

REPRESENTATIVE
JERRY MACKIE



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House of Representatives

SPONSOR STATEMENT

ON

HB 188

HB 188 establishes the crime of indecent viewing and photography for anyone viewing, making a picture or video taping an individual's nakedness without their knowledge or consent. I introduced the bill in response to an incident that occurred recently in one of my schools which revealed a major loophole in the state's invasion of privacy laws. The incident was the inadvertent discovery by students of a hidden video surveillance system in the girls' locker room.

Following the discovery, the initial reaction of dismay rapidly changed to strong feelings of anger, betrayal, and embarrassment throughout the community. In all small communities, the school gymnasium and shower facilities are used by practically everyone in town. They are also used by many visitors from neighboring communities that come to participate in local events. So the hidden recording system had potential implications for a whole lot of people in the region, both students and adults.

Equally distressing was the revelation that neither the state's invasion of privacy laws nor the child pornography laws applied to the situation. Unauthorized, hidden photographic surveillance by itself is not prohibited, even if the unsuspecting person is naked. There is no foundation then to the public's expectation and trust that privacy exists and is protected especially in places like lavatories, bathrooms, and dressing rooms.

I introduced HB 188 to close this loop hole in our privacy laws so that there is a deterrent to the commission of indecent viewing and photographing in the future.

Alaska State Legislature

REPRESENTATIVE
JERRY MACKIE



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House of Representatives

SECTIONAL ANALYSIS

OF

HB 188

In Section 1, AS 11.61.123 is proposed which establishes the crime of indecent viewing and photography.

Subsection AS 11.61.123(a) defines the crime as knowingly viewing or photographing the private exposure of certain body parts of an individual without the consent or knowledge of that person. Additional conditions of consent or knowledge is required for persons under 16 years of age.

Subsection (b) provides that multiple viewings or pictures of an individual are to be treated as separate violations.

Subsection (c) establishes the severity of the crime as a class C felony when the victim is a minor and a class A misdemeanor when the victim is an adult.

Subsection (d) allows operation of certain security surveillance systems when notice is posted and viewing is by operators of the same sex.

Subsection (e) provides definitions for "picture" and "private exposure".

Bill section 2 ties the application of the new law to offenses committed on or after the Act's effective date.

HB

1988

CS FOR HOUSE BILL NO. 198(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ELTON, Robinson, Davies

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to absences from the state for purposes of eligibility for
2 permanent fund dividends to care for a terminally ill parent, spouse, sibling,
3 child, or stepchild; to care for a parent, spouse, sibling, child, or stepchild with
4 a critical life-threatening illness whose treatment plan, as recommended by the
5 attending physician, requires travel outside the state for treatment at a medical
6 specialty complex; and to settle the estate of a deceased parent, spouse, sibling,
7 child, or stepchild; and providing for an effective date."

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

9 * **Section 1. FINDINGS AND INTENT.** The legislature finds that care of a terminally ill
10 individual by a member of that individual's immediate family is a socially beneficial and, in
11 this time of escalating health care costs, economically efficient measure. It is the intent of the
12 legislature to provide support to the families in this state during times of bereavement and to
13 encourage residents to provide personal care for terminally ill family members.

1 * Sec. 2. AS 43.23.095(8) is amended to read:

2 (8) "state resident" means an individual who is physically present in the
3 state with the intent to remain permanently; in the state under the requirements of
4 AS 01.10.055 or, if the individual is not physically present in the state, intends to
5 return to the state and remain permanently in the state under the requirements of
6 AS 01.10.055, and is absent only for any of the following reasons:

7 (A) vocational, professional, or other specific education for
8 which a comparable program was not reasonably available in the state;

9 (B) secondary or postsecondary education;

10 (C) military service;

11 (D) medical treatment;

12 (E) service in Congress;

13 (F) other reasons which the commissioner may establish by
14 regulation; [OR]

15 (G) service in the Peace Corps;

16 (H) to care for the individual's terminally ill parent, spouse,
17 sibling, child, or stepchild;

18 (I) to settle the estate of the individual's deceased parent,
19 spouse, sibling, child, or stepchild; or

20 (J) to care for a parent, spouse, sibling, child, or stepchild
21 with a critical life-threatening illness whose treatment plan, as
22 recommended by the attending physician, requires travel outside the state
23 for treatment at a medical specialty complex;

24 * Sec. 3. This Act takes effect January 1, 1997.



REPRESENTATIVE KIM ELTON

**CSHB 198 (STA)
PFD Bereavement Absence**

Sponsor Statement

CSHB 198 adds three allowable absences to residency determinations under the permanent fund dividend program:

- (1) for the purpose caring for a family member with a critical, life-threatening illness;
- (2) for the purpose of caring for a terminally ill family member;
- (3) for the purpose of settling the estate of a deceased family member.

Family member is defined in the bill as "parent, spouse, sibling, child, or step-child."

Care of a critically or terminally ill family member is an important family responsibility with both family and societal benefits. Family care provides the opportunity to express the love and support necessary to ease the pain of a person's most difficult days and weeks of life. Care provided by family members lowers the cost of health care for individuals who would otherwise be institutionalized, and thus lowers health care costs for society. Settling the estate of a family member is one of the unavoidable and burdensome duties imposed by death. Alaskans who undertake these difficult family responsibilities should not be punished financially by losing their permanent fund dividends.

It is unknown at this time how many Alaskans might apply for a "bereavement absence" because the agency has not recorded this data from past applications. If the number of persons absent for this reason is small, it will have a negligible effect on the amount of the permanent fund dividend. CSHB 198 has no effect on the general fund; there are no additional processing costs anticipated by the Permanent Fund Dividend Division.

CSHB 198 is supported by the American Association of Retired Persons, the Alaska Geriatric Exchange Network (AGENET), and the Alaska Women's Lobby.

Revision Date: 3/26/96 Dept. Affected: Revenue
 Title: Eligibility for PFD BRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: Representatives ELTON, Robinson, Davies
 Requestor: House State Affairs COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Nanci A. Jones, Director Phone: 465-2323
 Division: Permanent Fund Dividend Division Date: 3/26/96
 Approved by Commissioner: Wilson L. Condon Date: 3/26/96
 Agency: Department of Revenue

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Department of Revenue
Permanent Fund Dividend Division

Fiscal Note Analysis
House Bill 198

This bill amends the Definitions section of AS 43.23.095(8) by adding two additional allowable absences to the list of absences allowable for purposes of qualifying for a Permanent Fund Dividend. The proposed additional absences are: caring for the individual's terminally ill parent, spouse, sibling, child, or step-child; and absence from the state to settle the estate of the individual's deceased parent, spouse, sibling, child, or step-child. The effective date of this bill is January 1, 1996.

The fiscal effects of this bill are minimal and can be absorbed by the PFD Division.



Bringing the wisdom of experience and understanding to serve all generations

ALASKA LEGISLATIVE COMMITTEE

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March 6, 1995

Representative Kim Elton
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

MAR 03 1995

Dear Representative Elton:

This letter is to inform you of the intent of the State Legislative Committee to support HB 198, entitled PFD Bereavement Absences. The passage of HB 198 would be a great assistance to many seniors in Alaska and to other Alaskans of younger generations as well.

Our intent is to work with you as this bill progresses through committee hearings.

Sincerely,

Rupe Andrews, CCTF Coordinator, AARP

AGENET

Alaska
Geriatric
Exchange
NETwork

Patricia Branson
President
Kodiak
486-6181
Fax 486-4503

Dick Veldt
Vice President
Valdez
835-6032
Fax 835-2518

Kathleen Dexter
Secretary/Treasurer
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Cyndi Nation
Board
Fairbanks
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Fax 458-3850

Pat Porter
Board
Kenai
283-4158
Fax 283-5858

March 6, 1995

Representative Kim Elton
Capitol Building
Room 112
Juneau, Alaska 99811

Dear Representative Elton:

The Alaska Geriatric Network Exchange (AGENET) is pleased to be asked to support HB 198 which would allow Alaskans absence from the state to care for a terminally ill family member or settle the estate of a deceased family member.

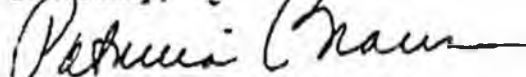
Members of AGENET are well aware of the need for Alaskans to care for family members. We, in managing senior services across the state, understand the situations described above. We advocate for Alaskans who have family members outside of Alaska to be able to care for those individuals so that honor and dignity remain with the terminally ill person as well as the caregivers as long as possible.

AGENET members also clearly understand the need to grieve a loved one and the importance of being able to do so in a proper manner. By allowing a "bereavement absence" for Alaskans, individuals would be able to be with other family members during a relative's death and be able to be a supportive family members in staying to take care of estate settlements.

Due to the geography and distance for those of us who choose to live in this beautiful state, it is difficult to even travel to get to family members who are terminally ill. HB 198 would allow Alaskans to be able take the time and care each of us would want to give to our loved ones who are sick and dying without suffering further financial penalties.

Thank you, Representative Elton, for introducing HB 198. It is a bill that will enhance Alaskans' role in caring for their families though they may be thousands of miles away.

Sincerely,



Patricia Branson, President
AGENET

ALASKA WOMEN'S LOBBY

P.O. BOX 22156, JUNEAU, ALASKA 99802

POSITION PAPER ON PFD BEREAVEMENT ABSENCES - HB 198

The Alaska Women's Lobby strongly supports the creation of an additional allowable absence for PFD eligibility.

HB 198 would allow a resident an excused absence for the purpose of caring for a terminally ill family member and for the settling of the family member's estate after death.

Many Alaskans have elderly family members living in other states. It is also fairly common for seriously ill Alaskans to travel out of state for specialized medical care. It is very important for the family unit that a person be able to care for a parent or a spouse who has a serious health condition.

Three quarters of all caregivers for older people are women. The caregiver's burden is a heavy one. He or she should not have to also suffer the additional penalty of being denied PFD eligibility.

We believe it is simply good public policy to lend support to families by encouraging rather than discouraging residents to provide personal care for terminally ill family members.

We urge the passage of HB 198.

HB

1999

B

HOUSE COMMITTEE REPORT

3/15/95

(7)

Date Referred: February 27, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 199

HOUSE BILL NO. 199

CRIMINAL TRANSMISSION OF HIV

"An Act creating the crime of criminal transmission of HIV."

recommends it be replaced with the following committee substitute CS HB 199 (STA) 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) Law
C indeterminate

fiscal note(s) _____

zero fiscal note(s) Admin
Corrections

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<u>Jeannette James</u>	James			<input checked="" type="checkbox"/>	
<u>Brian Porter</u>	Porter			<input checked="" type="checkbox"/>	
<u>Green</u>	Green	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<u>Robert Robinson</u>	ROBINSON		<input checked="" type="checkbox"/>		
<u>Ed Willis</u>	Willis	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<u>Dred Ogan</u>	Ogan	<input checked="" type="checkbox"/>			
		(2)	(1)	(3)	

CHAIR'S SIGNATURE

Jeannette James
James

FISCAL NOTE

No. 3
 Bill Vers. No.: CSHB 199(STA)
 (H) Publish Date: 3/15/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act creating the crime of criminal transmiss BRU: Statewide programs
 of HIV _____ Component inmate health
 Sponsor: Rep. Ogan
 Requester: Rep. Ogan COMPONENT SERIAL NO. 705

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The crime defined in this bill would carry a presumptive five year sentence. The Department of Corrections has no data to determine the number of people who may be convicted under this bill. It is believed that the number would be very small; perhaps zero in many years. However, in addition to the \$39.0 annual cost of maintaining an inmate in a prison facility, the exposure to medical cost liability must be considered.

In FY 95 alone nearly \$600.0 has been spent on one HIV/AIDS inmate. Every day an HIV positive inmate is in a prison facility, we risk adding huge medical costs to our inmate health care costs. DOC could be faced with an indeterminate number of million dollar per year inmates.

Prepared by: Jerry Shriner Phone: 465-5582
 Division: _____ Date: 3/3/95
 Approved by Commissioner: *Marion H. Kuda* Date: 3/3/95
 Agency: Department of Corrections

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FISCAL NOTE

No. 2

Bill Version: CSHB 199(STA)

(H) Publish Date: 3/15/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act creating the crime of criminal transmission of HIV"
Sponsor: Rep. Ogan
Requestor: (H) STA

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
No measurable impact on the Public Defender Agency is anticipated.

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

Phone: 264-4400
Date: _____

Approved by Commissioner: Mark Bove
Agency: Department of Administration

Date: 3/13/95

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FISCAL NOTE

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act creating the crime of criminal transmission of HIV." BRU: Prosecution
 of HIV." Component: All
 Sponsor: Representative Ogan
 Requester: House State Affairs 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						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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						
TOTAL	*****	*****	*****	*****	*****	*****

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	*****	*****	*****	*****	*****	*****
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would make it a class A felony for a person, knowing that he or she is infected with the human immunodeficiency virus (HIV), to knowingly expose others to HIV infection through intimate sexual contact, infectious body fluids (including blood, tissue, semen or organs) in any manner that could result in transmission of HIV to a person who is unaware that the person causing the exposure is infected with HIV.

At the current time, 660 Alaskans are known to be infected with HIV, including 120 full blown cases of AIDS. This number includes only those tested through state health laboratories. About four percent of those known to be infected with HIV are under the age of 20. Because many at high risk test anonymously or out of state, the actual number of persons residing in the state who have tested positive for HIV is undoubtedly higher than state records indicate. The current rate of growth for HIV in Alaska is about eight percent per year.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/6/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/6/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 199

ANALYSIS CONTINUATION:

Of the known HIV cases in Alaska, the vast majority resulted from consensual sexual contact. Obtaining a conviction under this circumstance (simply securing sufficient evidence to warrant a prosecution) would be difficult, if not impossible. Consequently, the number of convictions resulting from exposure to HIV through intimate sexual contact may be relatively small. In a rare case where a person infected with HIV deliberately sets about to infect another, it might be possible to obtain a conviction. However, such a case is already chargeable under the state's existing criminal laws.

Although the bill is intended to deter persons who have tested positive from engaging in conduct that may spread HIV, we are concerned that it will have the unintended, but certain effect of deterring persons at the highest risk from seeking HIV testing and counseling, thus increasing the risk of spreading HIV.

Under these circumstances, estimating the number of prosecutions that would occur if the bill is enacted would be highly speculative, making it nearly impossible to determine a fiscal impact.

Barbara Brink - speaker

Rope - testing

Does the leg. already exist?

WORK DRAFT

WORK DRAFT

WORK DRAFT

* 18.15.106 - quarantines pox
quarantines - violation class A misdemeanor
(Notzelm. face 94)

9-LS0763F
Luckhaupt
3/10/95

* 26 other states - but challenged, ^{received} because of federal \$
CS FOR HOUSE BILL NO. 199()

IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

Does it happen in rape victims?

BY * ABA: HIV sanctions play limiting role
discouraged using this legislation.

Offered:
Referred:

Sponsor(s): REPRESENTATIVE OGAN

Dpt HESS class A felony

A BILL

* Already on books"
Margot

FOR AN ACT ENTITLED

gap - young women developmental disability

1 "An Act creating the crime of criminal transmission of HIV."

transmission w/o intent to harm

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 11.41 is amended by adding new sections to read:

4 ARTICLE 6. CRIMINAL TRANSMISSION OF HIV.

5 Sec. 11.41.600. CRIMINAL TRANSMISSION OF HIV. (a) A person
6 commits the crime of criminal transmission of HIV when the person, knowing that the
7 person is infected with HIV, ^{Right to privacy - hurt oneself.}

8 (1) voluntarily engages in intimate sexual contact with another person
9 in a manner that could result in the transmission of HIV;

10 (2) deliberately exposes the person's bodily fluid to the body of another
11 person in a manner that could result in the transmission of HIV;

12 (3) transfers, donates, or provides the person's blood, tissue, semen,
13 organs, or other potentially infectious body fluids for transfusion, transplantation,
14 insemination, or other administration to another; or

15 (4) dispenses, delivers, exchanges, sells, or in another way transfers to

references: Illinois law (1) challenge - vagueness def. intimate contact
(2) provide someone had knowledge of HIV
New Text Underlined (DELETED TEXT BRACKETED) CSHB 199()

another a nonsterile device or paraphernalia designed for the intravenous or intramuscular administration of drugs.

(b) It is an affirmative defense to a prosecution under

(1) (a)(1) of this section that the intimate sexual contact occurred under the following conditions:

(A) the parties to the intimate sexual contact were legally married at the time of the contact; *what happens if they still get aids*

as opposed to sex. (B) the person exposed knew that the defendant was infected with HIV, knew that the contact could result in transmission of HIV, and voluntarily participated in the contact with the knowledge; and

(C) during the contact, the parties used reasonable prophylactic measures designed to minimize the risk of transmission of sexually transmitted disease; *what happens if both have HIV and want sex?*

(2) (a)(2) of this section, that the exposure was incidental to the administration of medical treatment to the defendant, that the treatment took place at the direction of a medical professional licensed and qualified to authorize the treatment, and that the defendant made efforts that were reasonable considering the circumstances to inform the medical professional that the defendant was infected with HIV;

(3) (a)(1) or (2) of this section, if the person exposed to HIV by the proscribed conduct had, before that exposure, been medically diagnosed as being infected with HIV.

(c) In a prosecution under (a) of this section, the determination of whether a defendant acted with knowledge that the defendant was infected with HIV shall be based on the totality of the evidence concerning the existence of the knowledge, and may not be construed as requiring that the accused has submitted to or received the results of a particular test or method of diagnosis.

(d) This section does not require transmission of HIV to have actually occurred in order for a person to have committed criminal transmission of HIV.

(e) In this section,

(1) "HIV" means human immunodeficiency virus or another identified

1 causative agent of acquired immunodeficiency syndrome;

2 (2) "intimate sexual contact" means sexual penetration or any sexual
3 contact in which the body of one person is exposed to a body fluid of another person.

4 (f) Criminal transmission of HIV is a class A felony.

5 * Sec. 2. AS 18.67.101 is amended to read:

6 Sec. 18.67.101. INCIDENTS AND OFFENSES TO WHICH THIS CHAPTER
7 APPLIES. The board may order the payment of compensation in accordance with the
8 provisions of this chapter for personal injury or death that resulted from

9 (1) an attempt on the part of the applicant to prevent the commission
10 of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
11 officer to do so, or aiding a victim of crime; or

12 (2) the commission or attempt on the part of one other than the
13 applicant to commit any of the following offenses:

14 (A) murder in any degree;

15 (B) manslaughter;

16 (C) criminally negligent homicide;

17 (D) assault in any degree;

18 (E) kidnapping;

19 (F) sexual assault in any degree;

20 (G) sexual abuse of a minor;

21 (H) robbery in any degree;

22 (I) threats to do bodily harm; [OR]

23 (J) driving while intoxicated or another crime resulting from the
24 operation of a motor vehicle, boat, or airplane when the offender is intoxicated;

25 OR

26 (K) criminal transmission of HIV.

March 13, 1995

Jeannette James
Chair, State Affairs Commission
Juneau, Alaska

Ms. James,

I am writing in regards to HB 199, the bill to criminalize transmission of the HIV virus.

I urge you and your committee to consider the folly of a bill that could have a negative impact on individuals considering HIV testing. I have no problem in prosecuting a person who knowingly puts another person at risk for this horrible disease, but I think the existing laws can be used for this.

Anything that would put a barrier to HIV testing is ill-advised. We live in a state where there are already a good deal of barriers to testing and a lot of "high risk" behavior. Out of roughly 600,000 residents, only 76,000 have been tested through the state labs. That leaves a lot of people who don't know their HIV status. A bill such as this makes ignorance bliss.

I also have to take exception to the spousal immunity part of this bill. Why should a husband or wife who brings this disease home be exempt? My experience as a nurse on an AIDS unit brought me in touch with that tragedy too many times.

Please do not make this bill law. It will only add to the AIDS epidemic, not help to stop it.

Deborah L. Vandruff, R.N.
Deborah L. Vandruff R.N.
S.T.O.P. AIDS Project Director
520 E. 4th Ave.
Anchorage, Ak. 99501

FAX COVER SHEET

TO: Jeanette James

FAX NUMBER SENT TO: 465-2381

DATE: 3/14/95 TIME: _____

RE: HB 199

FROM: Deborah Vandruff, STOP AIDS project
c/o Mendel and Huntington
845 K Street
Anchorage, AK 99501
TEL: (907) 279-5001
FAX: (907) 279-5437

NUMBER OF PAGES AFTER TRANSMITTAL SHEET: 1

DESCRIPTION OF DOCUMENTS SENT: letter

Hard copy to follow by mail messenger none

ADDITIONAL MESSAGE:

Please call (907) 279-5001 if this fax is illegible, incomplete,
or received in error. Thank you.

HB

2000

HOUSE BILL NO. 200

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES MULDER BY REQUEST, Foster

Introduced: 2/27/95

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

8 * Section 1. AS 33.30.071(a) is amended to read:

9 (a) [NOTWITHSTANDING AS 33.30.011(1), THE COMMISSIONER OF
 10 PUBLIC SAFETY SHALL PROVIDE FOR THE CUSTODY, CARE, AND
 11 DISCIPLINE OF PRISONERS PENDING ARRAIGNMENT, COMMITMENT BY A
 12 COURT TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, OR
 13 ADMISSION TO A STATE CORRECTIONAL FACILITY. EXCEPT

*Responsibility for prisoners pending
 Commitment*

declassification

1 AS PROVIDED IN (c) OF THIS SECTION, THE RESPONSIBILITY FOR
2 PROVIDING NECESSARY MEDICAL SERVICES FOR PRISONERS REMAINS
3 WITH THE COMMISSIONER OF CORRECTIONS UNDER AS 33.30.011(4).] The
4 commissioner is [OF CORRECTIONS AND THE COMMISSIONER OF PUBLIC
5 SAFETY ARE] not responsible for providing custody, care, and discipline for a person
6 detained under AS 47.30.705 or AS 47.37.170 [,] unless the person is admitted into
7 a state correctional facility.

emergency detention for mental illness

* Sec. 2. AS 33.30.071(b) is amended to read:

9 (b) The responsibility of the commissioner [OF PUBLIC SAFETY] under
10 AS 33.30.011 begins when [(a) OF THIS SECTION DOES NOT BEGIN UNTIL]
11 a prisoner is accepted into the commissioner's custody [OF THE COMMISSIONER
12 OF PUBLIC SAFETY,] or admitted into a correctional facility [OR OTHER
13 FACILITY DESIGNED FOR HOLDING PRISONERS, AND THE COMMISSIONER
14 OF PUBLIC SAFETY IS NOTIFIED OF THE ACCEPTANCE OR ADMISSION].

* Sec. 3. AS 39.25.120(c)(18) is amended to read:

16 (18) guards employed by the Department of Corrections or the
17 Department of Public Safety for emergencies;

* Sec. 4. This Act takes effect July 1, 1995.

*These are part of
a list of res in
the partially attempt service*

FISCAL NOTE

STATE OF ALASKA

BILL NO: HB 200

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

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: 289-5691
 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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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

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.

GOVERNOR'S TASK FORCE

ON

COMMUNITY JAILS

***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. Guazeli, 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

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'S TASK FORCE

ON THE

CONTRACT JAILS PROGRAM

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

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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)

Governor Hickel's Organizational Efficiency Task Force

*Summary
Report*



*Office of the Governor
Office of Management and Budget*



July, 1992

DEPARTMENT OF PUBLIC SAFETY

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

201

9-GH0028\G
Luckhaupt
4/5/95

CS FOR HOUSE BILL NO. 201(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to 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, 4, 5, 8, 16.1, and 65, and Alaska
5 Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing for an
6 effective 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 these fees~~ if the court finds exceptional

Al Employment Security Act

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 sets out

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

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

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

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

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

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

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

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

1 the date of distribution of the order, unless the time for payment is extended by the
2 court. If timely payment is not made, the court shall dismiss the case or appeal. If
3 payment is made, the prisoner's filing and supporting documents shall be accepted for
4 filing with the court.

5 Sec. 09.19.020. SERVICE OF PROCESS IN CERTAIN PRISONER CASES
6 OR APPEALS. A prisoner may not commence service of process of the summons or
7 service of the notice of appeal in litigation against the state without court approval
8 under AS 09.19.030 or 09.19.040.

9 Sec. 09.19.030. REVIEW AND DISMISSAL OF CERTAIN PRISONER
10 ACTIONS. (a) If a prisoner has filed litigation against the state consisting of a civil
11 action or an administrative appeal, the court shall review the prisoner's filings to
12 determine whether the standards of this section have been met.

13 (b) In order for the court to allow the civil action or administrative appeal to
14 proceed, the court must find that, based on the information available to the judge,

- 15 (1) material statements made by the prisoner are not untrue;
- 16 (2) the action or administrative appeal is not frivolous or malicious; and
- 17 (3) the pleadings filed set out specific facts that would, if proven,
- 18 (A) state a claim upon which relief may be granted, or
- 19 (B) entitle the prisoner to reversal on appeal.

20 (c) If the court determines that the requirements of (b)(1) - (3) of this section
21 have not been met, the court shall give notice to the prisoner of its intent to dismiss
22 the case or administrative appeal and allow the prisoner an opportunity to reply in
23 writing. If the reply does not demonstrate that the requirements of (b)(1) - (3) of this
24 section have been met, or if no reply is filed, the court shall issue an order dismissing
25 the case or administrative appeal. If the court determines that the requirements of
26 (b)(1) - (3) of this section have been met, the court shall direct service of process.

27 Sec. 09.19.040. REVIEW AND DISMISSAL OF CERTAIN PRISONER
28 APPEALS. (a) If a prisoner files an appeal from litigation against the state, the
29 appellate court shall notify the lower court of the filing.

30 (b) Upon receiving notice under (a) of this section, the lower court shall
31 review its records and advise the appellate court in writing as to whether the appeal

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appears

- (1) to present a colorable issue of fact or law;
- (2) not to be frivolous; and
- (3) not to be malicious.

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(c) If the appellate court is advised by the lower court that the standards set out in (b)(1) - (3) of this section have not been met, the court shall give notice to the prisoner of its intent to dismiss the appeal and allow the prisoner an opportunity to reply in writing. If the reply does not demonstrate that the requirements of (b)(1) - (3) of this section have been met, or if no reply is filed, the court shall issue an order dismissing the appeal. If the court determines that the standards of (b)(1) - (3) of this section have been met, the court shall direct service of the notice of appeal.

Sec. 09.19.050. STAY IN PRISONER DISCIPLINARY APPEALS. A superior court that reviews a disciplinary decision of the Department of Corrections as an administrative appeal may not enter an order staying disciplinary sanctions unless the pleadings filed by the prisoner establish by clear and convincing evidence that the prisoner has alleged a violation of a fundamental constitutional right and is likely to succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay is not granted, that the Department of Corrections can be adequately protected if a stay is granted, and that a stay will not adversely affect the public interest in effective penal administration.

Sec. 09.19.060. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS IN PRISONER CASES. In litigation against the state brought by a prisoner, a court may not enter an injunction or issue an order or decision that would impose an obligation on the state or its employees that would exceed the obligations imposed by the United States Constitution, the Constitution of the State of Alaska, and applicable federal and state statutes and regulations, unless the obligation is agreed to by the state.

Sec. 09.19.070. DISCOVERY IN PRISONER CASES. The automatic disclosure provisions of Alaska Rule of Civil Procedure 16.1 do not apply to litigation against the state brought by a prisoner.

Sec. 09.19.100. DEFINITIONS. In this chapter,

- (1) "litigation against the state" means an action or an appeal from a

(action)

1 civil action or from the final decision of an administrative agency that

2 (A) involves the state, an officer or agent of the state, or a state
3 employee, or a former officer or agent of the state or state employee, regarding
4 conduct that occurred during that former officer's, agent's, or employee's state
5 employment or agency, whether the officer, agent, or employee is sued in an
6 official or a personal capacity; and

7 (B) is related to ^uthe person's status or treatment as a prisoner
8 or to a criminal charge against or involving the person;

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

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

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

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

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

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

30 (f) The state may execute on a judgment awarded to the state, to a state
31 employee, or to a former state employee against a party to an action who is

1 incarcerated for a criminal conviction by sending a notice of levy to the correctional
2 facility in which the person is incarcerated. All money in an incarcerated person's
3 account at a correctional facility is available for disbursement under a notice of levy
4 by the state under this subsection, in the following order of priority:

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

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

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

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

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

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

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

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

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

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

1 court imposed a sentence in accordance with a plea agreement that provided for
2 a minimum sentence, the defendant may appeal only that portion of the sentence
3 that exceeds the minimum sentence provided for in the plea agreement and that
4 exceeds two years of unsuspended incarceration. By appealing a sentence under this
5 section, the defendant waives the right to plead that by a revision of the sentence
6 resulting from the appeal the defendant has been twice placed in jeopardy for the same
7 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 new change in law requires observance of procedures without
24 which the 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 was 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) ~~an appeal from a district or superior court ruling on an application~~
11 ~~for post-conviction relief;~~

12 (3) a petition for review or certiorari from an appellate court ruling on
13 an application for post-conviction relief; or

14 (4) an action or claim for habeas corpus in federal court attacking a
15 state conviction.

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

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

23 * Sec. 11. AS 22.10.020(f) is amended to read:

24 (f) An appeal to the superior court may be taken on the ground that an
25 unsuspended [A] sentence of imprisonment exceeding 120 [OF 90] days [OR MORE]
26 was excessive and the superior court in the exercise of this jurisdiction has the power
27 to reduce the sentence. The state may appeal a sentence on the ground that it is too
28 lenient. When a sentence is appealed on the ground that it is too lenient, the court
29 may not increase the sentence but may express its approval or disapproval of the
30 sentence and its reasons in a written opinion.

31 * Sec. 12. AS 33.30 is amended by adding a new section to read:

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1 *New* Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a)
2 A prisoner may obtain judicial review by the superior court of a final disciplinary
3 decision by the department only if the prisoner alleges specific facts establishing a
4 violation of the prisoner's fundamental constitutional rights that prejudiced the
5 prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner
6 filing a notice of appeal and other required documents in accordance with AS 09.19
7 or the applicable rules of court governing administrative appeals that do not conflict
8 with AS 09.19. If the appeal is not dismissed under AS 09.19.010, a record of the
9 proceedings shall be prepared by the department, consisting of the original papers and
10 exhibits submitted in the disciplinary process and a cassette tape of the disciplinary
11 hearing. The record shall be prepared and transmitted in accordance with the
12 applicable rules of court governing administrative appeals.

13 (b) A disciplinary decision may not be reversed

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

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

22 (3) because of insufficient evidence if the record described in (a) of this
23 section shows that the disciplinary decision was based on some evidence that could
24 support the decision reached.

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

29 * Sec. 13. AS 33.32.060 is amended to read:

30 Sec. 33.32.060. LIMITATION ON ATTACHMENT, ETC., OF WAGES.

31 Except for execution by the state under AS 09.38.030(f), only [ONLY] the prisoner

1 payments retained by the commissioner of corrections under AS 33.32.050(d) are
2 subject to lien, attachment, garnishment, execution, or similar procedures to encumber
3 funds or property.

4 * Sec. 14. Rule 10, Alaska Administrative Rules of Court, is amended by adding a new
5 subsection to read:

6 (e) The provisions of this rule do not apply to an exemption from payment of
7 filing fees in civil actions filed by prisoners against the state, or an officer, agent,
8 employee, or former officer, agent, or employee of the state, that is governed by the
9 provisions of AS 09.19.

10 * Sec. 15. Rule 204(b), Alaska Rules of Appellate Procedure, is amended to read:

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

16 (1) a completed docketing statement in the form prescribed by these
17 rules;

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

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

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

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

25 (B) a motion for waiver of filing fee pursuant to Administrative
26 Rule 9(f)(1); or

27 (C) a motion to appeal at public expense pursuant to Rule 209;

28 (5) unless the party is represented by court-appointed counsel, the party
29 is the state, municipality, or officer or agency thereof, or the party is an employee
30 appealing denial of compensation by the Alaska Workers' Compensation Board or
31 denial of benefits under AS 23.20 (Employment Security Act),

- 1 (A) the cost bond or deposit required by Rule 204(c)(1);
2 (B) a copy of a superior court order approving the party's
3 supersedeas bond or other security in lieu of bond or a copy of the party's
4 motion to the superior court for approval of a supersedeas bond or other
5 security;
6 (C) a motion for waiver of cost bond; or
7 (D) a motion to appeal at public expense pursuant to Rule 209;
8 (6) a designation of transcript if the party intends to have portions of
9 the electronic record transcribed pursuant to Rule 210(b); and
10 (7) proof of service of the notice of appeal and all required
11 accompanying documents, except the filing fee, on
12 (A) the clerk of the trial court which entered the judgment or
13 order being appealed; and
14 (B) all other parties to the trial court action.

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

20 * Sec. 16. Rule 208, Alaska Rules of Appellate Procedure, is repealed and reenacted to
21 read:

22 RULE 208. CUSTODY OF PRISONERS IN POST-CONVICTION RELIEF
23 PROCEEDINGS. (a) Release of Applicant Pending Review of Order Denying
24 Release. The court having jurisdiction over the appeal of a denial of an application
25 for post-conviction relief may not grant bail or release the applicant pending appeal.
26 If the appellate court determines that post-conviction relief should be granted, the case
27 shall be remanded to the trial court for a bail hearing.

28 (b) Release of Applicant Pending Review of Decision Ordering a New Trial.
29 If an appeal of an order granting an applicant a new trial is pending, Appellate Rule
30 206(b) shall govern an appeal from an order that denies bail pending appeal or imposes
31 conditions of release pending appeal.

1 * Sec. 17. Rule 209(a), Alaska Rules of Appellate Procedure, is amended by adding a new
2 paragraph to read:

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

6 * Sec. 18. Rule 215(a), Alaska Rules of Appellate Procedure, is repealed and reenacted to
7 read:

8 (a) Notification of Right to Appeal Sentence. At the time of imposition of
9 sentence, the judge shall inform the defendant that

10 (1) the defendant may appeal a sentence on the ground that it is
11 excessive, except as provided in (a)(2) and (3) of this rule;

12 (2) the defendant has no right to appeal a sentence as excessive if

13 (A) the sentence does not exceed two years of unsuspended
14 incarceration for a felony or 120 days of unsuspended incarceration for a
15 misdemeanor; or

16 (B) the sentence was imposed in accordance with a plea
17 agreement under Criminal Rule 11 that provided for imposition of a specific
18 sentence or a sentence equal to or less than a specified maximum;

19 (3) the defendant may appeal a sentence imposed in accordance with
20 a plea agreement under Criminal Rule 11 that provided for a minimum sentence, but
21 may appeal as excessive only the part of the sentence that exceeds the greater of

22 (A) the minimum sentence provided for in the plea agreement;

23 or

24 (B) two years of unsuspended incarceration in a felony case or
25 120 days of unsuspended incarceration in a misdemeanor case;

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

30 (5) 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. 19. 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. 20. 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 certified.

23 * Sec. 21. 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. 22. Rule 11(c)(3), Alaska Rules of Criminal Procedure, is amended by adding new

1 subparagraphs to read:

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

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

13 * Sec. 23. Rule 11(e)(3), Alaska Rules of Criminal Procedure, is amended to read:

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

18 * Sec. 24. Rule 11(e)(4), Alaska Rules of Criminal Procedure, is amended to read:

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

26 * Sec. 25. Rule 11(h)(1), Alaska Rules of Criminal Procedure, is amended to read:

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

31 (i) A motion for withdrawal is untimely [TIMELY] and is

1 [NOT] barred if [BECAUSE] made subsequent to judgment or sentence [IF IT
2 IS MADE WITH DUE DILIGENCE]. After imposition of sentence, the
3 withdrawal of a plea may be sought only under AS 12.72.

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

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

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

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

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

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

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

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

22 * Sec. 26. Rule 33, Alaska Rules of Criminal Procedure, is amended to read:

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

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

30 (c) Time for Motion. A motion for a new trial based on the ground of newly
31 discovered evidence may be made only before or within 180 days [TWO YEARS]

1 after final judgment, but if an appeal is pending the court may grant the motion only
2 on remand of the case. A motion for a new trial based on any other grounds shall be
3 made within 5 days after verdict or finding of guilt, or within such further time as the
4 court may fix during the 5-day period.

5 * Sec. 27. Rule 35(a), Alaska Rules of Criminal Procedure, is repealed and reenacted to
6 read:

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

9 * Sec. 28. Rule 35(b), Alaska Rules of Criminal Procedure, is repealed and reenacted to
10 read:

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

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

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

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

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

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

24 * Sec. 29. Rule 35.1(a), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

31 (3) that a prior conviction has been set aside and the prior

1 conviction was used as a statutorily required enhancement of [THAT] the sentence
2 imposed [EXCEEDED THE MAXIMUM AUTHORIZED BY LAW, OR IS
3 OTHERWISE NOT IN ACCORDANCE WITH THE SENTENCE AUTHORIZED BY
4 LAW];

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

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

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

14 (7) that

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

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

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

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

29 (8) that the applicant should be allowed to withdraw a plea of
30 guilty or nolo contendere in order to correct manifest injustice as set out in
31 Criminal Rule 11(h)(1)(ii); or

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

6 * Sec. 30. Rule 35.1(c), Alaska Rules of Criminal Procedure, is amended to read:

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

14 * Sec. 31. Rule 35.1(d), Alaska Rules of Criminal Procedure, is amended to read:

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

1 * **Sec. 32.** Rule 35.1(g), Alaska Rules of Criminal Procedure, is amended to read:

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

17 * **Sec. 33.** Alaska Rule of Criminal Procedure 35.1(h) is repealed.

18 * **Sec. 34.** Notwithstanding any other provision of this Act, a person whose conviction was
19 entered before July 1, 1994, has until July 1, 1996, to file a claim under AS 12.72.

20 * **Sec. 35.** (a) Section 1 of this Act has the effect of amending

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

24 (2) Alaska Rules of Civil Procedure 4 and 5 and Alaska Rules of Appellate
25 Procedure 204, 403, and 602, by providing that a prisoner may not commence service of
26 process in litigation against the state without court approval;

27 (3) Alaska Rule of Civil Procedure 8, by providing specific requirements for
28 pleading by a prisoner in litigation against the state;

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

31 (5) Alaska Rule of Civil Procedure 65, by restricting the availability of

1 injunctive relief in litigation against the state by a prisoner;

2 (6) Alaska Rules of Appellate Procedure 204 and 403, by altering the
3 procedure for appeals and petitions for review in litigation by the state by prisoners; and

4 (7) Alaska Rule of Appellate Procedure 603, by restricting the availability of
5 stays in appeals by a prisoner to the superior court of disciplinary decisions of the Department
6 of Corrections.

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

9 * Sec. 36. Sections 1 - 13 and 34 of this Act take effect only if secs. 14 - 33 and 35 of this
10 Act take effect.

11 * Sec. 37. If this Act takes effect, it takes effect July 1, 1995.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 201(JUD) (Work Draft dated 4/5/95)

1 Page 4, line 31, following "means":

2 Delete "an"

3 Insert "a civil"

2 ✓ all adopted

4 Page 5, line 7:

5 Delete "the"

6 Insert "a"

3 ✓
4 ✓

7 Page 8, line 23:

8 Delete "new"

9 Delete "in law"

FISCAL NOTE

Bill Number: _____
 (H) Publish Date: _____

**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						
TOTAL OPERATING	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						
TOTAL	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 Phone: 465-3672
 Division: Administrative Services Division Date: 2/21/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/21/95
 Agency: Department of Law

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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

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						
TOTAL OPERATING	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						
TOTAL	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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STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: _____
(H) Publish Date: _____

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

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: \$ _____

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

Bill Number: _____
(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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
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						
TOTAL	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.)

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:
 (H) Publish Date:

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
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						
TOTAL	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-GH0028F ✓
Luckhaupt
4/4/95

CS FOR HOUSE BILL NO. 201(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to 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, 4, 5, 8, 16.1, and 65, and Alaska
5 Rules of Criminal Procedure 11, 33, 35, and 35.1; and providing for an
6 effective 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 sets out

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

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

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

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

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

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

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

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

1 the date of distribution of the order, unless the time for payment is extended by the
2 court. If timely payment is not made, the court shall dismiss the case or appeal. If
3 payment is made, the prisoner's filing and supporting documents shall be accepted for
4 filing with the court.

5 Sec. 09.19.020. SERVICE OF PROCESS IN CERTAIN PRISONER CASES
6 OR APPEALS. A prisoner may not commence service of process of the summons or
7 notice of appeal in litigation against the state without court approval under
8 AS 09.19.030 or 09.19.040.

9 Sec. 09.19.030. REVIEW AND DISMISSAL OF CERTAIN PRISONER
10 ACTIONS. (a) If a prisoner has filed litigation against the state consisting of a civil
11 action or an administrative appeal, the court shall review the prisoner's filings to
12 determine whether the standards of this section have been met.

13 (b) In order for the court to allow the civil action or administrative appeal to
14 proceed, the court must find that, based on the information available to the judge,

15 (1) material statements made by the prisoner are not untrue;

16 (2) the action or administrative appeal is not frivolous or malicious; and

17 (3) the pleadings filed set out specific facts that would, if proven,

18 (A) state a claim upon which relief may be granted; or

19 (B) entitle the prisoner to reversal on appeal.

20 (c) If the court determines that the requirements of (b)(1) - (3) of this section
21 have not been met, the court shall give notice to the prisoner of its intent to dismiss
22 the case or administrative appeal and allow the prisoner an opportunity to reply in
23 writing. If the reply does not demonstrate that the requirements of (b)(1) - (3) of this
24 section have been met, or if no reply is filed, the court shall issue an order dismissing
25 the case or administrative appeal. If the court determines that the requirements of
26 (b)(1) - (3) of this section have been met, the court shall direct service of process.

27 Sec. 09.19.040. REVIEW AND DISMISSAL OF CERTAIN PRISONER
28 APPEALS. (a) If a prisoner files an appeal from litigation against the state, the
29 appellate court shall notify the lower court of the filing.

30 (b) Upon receiving notice under (a) of this section, the lower court shall
31 review its records and advise the appellate court in writing as to whether the appeal

1 appears

2 (1) to present a colorable issue of fact or law;

3 (2) not to be frivolous; and

4 (3) not to be malicious.

5 (c) If the appellate court is advised by the lower court that the standards set
6 out in (b)(1) - (3) of this section have not been met, the court shall give notice to the
7 prisoner of its intent to dismiss the appeal and allow the prisoner an opportunity to
8 reply in writing. If the reply does not demonstrate that the requirements of (b)(1) - (3)
9 of this section have been met, or if no reply is filed, the court shall issue an order
10 dismissing the appeal. If the court determines that the standards of (b)(1) - (3) of this
11 section have been met, the court shall direct service of process.

12 Sec. 09.19.050. STAY IN PRISONER DISCIPLINARY APPEALS. A
13 superior court that reviews a disciplinary decision of the Department of Corrections
14 as an administrative appeal may not enter an order staying disciplinary sanctions unless
15 the pleadings filed by the prisoner establish by clear and convincing evidence that the
16 prisoner has alleged a violation of a fundamental constitutional right and is likely to
17 succeed on the merits in the appeal, that the prisoner faces irreparable harm if a stay
18 is not granted, that the Department of Corrections can be adequately protected if a stay
19 is granted, and that a stay will not adversely affect the public interest in effective penal
20 administration.

21 Sec. 09.19.060. INJUNCTIONS OR ORDERS IMPOSING OBLIGATIONS
22 IN PRISONER CASES. In litigation against the state brought by a prisoner, a court
23 may not enter an injunction or issue an order or decision that would impose an
24 obligation on the state or its employees that would exceed the obligations imposed by
25 the United States Constitution, the Constitution of the State of Alaska, and applicable
26 federal and state statutes and regulations, unless the obligation is agreed to by the state.

27 Sec. 09.19.070. DISCOVERY IN PRISONER CASES. The automatic
28 disclosure provisions of Alaska Rule of Civil Procedure 16.1 do not apply to litigation
29 against the state brought by a prisoner.

30 Sec. 09.19.100. DEFINITIONS. In this chapter,

31 (1) "litigation against the state" means an action or an appeal from a

1 civil action or from the final decision of an administrative agency that involves the
2 state, an officer or agent of the state, a former officer or agent of the state, or a state
3 employee or a former state employee regarding conduct that occurred during that
4 former employee's state employment, whether the officer, agent, or employee is sued
5 in an official or a personal capacity;

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, to a state
28 employee, or to a former state employee against a party to an action who is
29 incarcerated for a criminal conviction by sending a notice of levy to the correctional
30 facility in which the person is incarcerated. All money in an incarcerated person's
31 account at a correctional facility is available for disbursement under a notice of levy