by the state under this subsection, in the following order of priority:

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

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

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

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

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

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

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

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

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

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

exceeds two years of unsuspended incarceration. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal the defendant has been twice placed in jeopardy for the same offense.

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

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

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

CHAPTER 72. POST-CONVICTION RELIEF PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

Sec. 12.72.010. SCOPE OF POST-CONVICTION RELIEF. A person who has been convicted of, or sentenced for, a crime may institute a proceeding for post-conviction relief if the person claims

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

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

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

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

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

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

(7) that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) suffered from a physical disability or from a mental disease or defect that precluded the timely assertion of the claim; or

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

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

(A) was not known within

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

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

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

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

(C) is not impeachment evidence; and

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

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

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

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

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

Sec. 12.72.040. BURDEN OF PROOF IN POST-CONVICTION RELIEF PROCEEDINGS. A person applying for post-conviction relief must prove all factual assertions by clear and convincing evidence.

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

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

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

(2) an appeal from a district or superior court ruling on an application for post-conviction relief;

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

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

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

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

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

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

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

Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a) A prisoner may obtain judicial review by the superior court of a final disciplinary decision by the department only if the prisoner alleges specific facts establishing a

violation of the prisoner's fundamental constitutional rights that prejudiced the prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner filing a notice of appeal and other required documents in accordance with AS 09.19 or the applicable rules of court governing administrative appeals that do not conflict with AS 09.19. If the appeal is not dismissed under AS 09.19.010, a record of the proceedings shall be prepared by the department, consisting of the original papers and exhibits submitted in the disciplinary process and a cassette tape of the disciplinary hearing. The record shall be prepared and transmitted in accordance with the applicable rules of court governing administrative appeals.

(b) A disciplinary decision may not be reversed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the cost bond or deposit required by Rule 204(c)(1);

(B) a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's

motion to the superior court for approval of a supersedeas bond or other security;

(C) a motion for waiver of cost bond; or

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

(6) a designation of transcript if the party intends to have portions of the electronic record transcribed pursuant to Rule 210(b); and

(7) proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on

(A) the clerk of the trial court which entered the judgment or order being appealed; and

(B) all other parties to the trial court action.

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

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

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

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

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

(7) The provisions of this subsection do not apply to the filing fees in

a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19.

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

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

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

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

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

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

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

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

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

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

(5) if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant on the appeal.

*** Sec. 19.** Rule 521, Alaska Rules of Appellate Procedure, is amended to read:

RULE 521. CONSTRUCTION. These rules are designed to facilitate business

and advance justice. They may be relaxed or dispensed with by the appellate courts where a strict adherence to them will work surprise or injustice. **In a matter involving the validity of a criminal conviction or sentence, this rule does not authorize an appellate court or the superior court, when acting as an intermediate appellate court, to allow**

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

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

*** Sec. 20.** Rule 603(a), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(6) Stay in Prisoner Disciplinary Appeals. The court may not stay imposition of sanctions arising from a disciplinary decision of the Department of Corrections unless the court finds that the prisoner has alleged a violation of a fundamental constitutional right and is likely to succeed on the merits of 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. In evaluating the stay motion, the court may consider documents and affidavits offered by either party, and shall consider the stay motion without waiting for the record to be certified.

*** Sec. 21.** Rule 604(b)(1)(A), Alaska Rules of Appellate Procedure, is amended to read:

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

*** Sec. 22.** Rule 11(c)(3), Alaska Rules of Criminal Procedure, is amended by adding new subparagraphs to read:

(iii) that the defendant waives the right to appeal a sentence as excessive and waives the right to seek reduction of a

sentence under Criminal Rule 35 if a plea agreement between the defendant and the prosecuting attorney provides for a specific sentence or a sentence equal to or less than a specified maximum; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

court may fix during the 5-day period.

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

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

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

(b) Modification or Reduction of Sentence. The court

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

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

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

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

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

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

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

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

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

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

LAW];

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

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

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

(7) that

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

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

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

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

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

(9) that the applicant was not afforded effective assistance of counsel at trial or on direct appeal [, WHEN SUFFICIENT REASONS EXIST TO ALLOW RETROACTIVE APPLICATION OF THE CHANGED LEGAL

STANDARDS; MAY INSTITUTE A PROCEEDING UNDER THIS RULE TO SECURE RELIEF].

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

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

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

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

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

(g) Hearing -- Evidence -- Order. The application shall be heard in, and before any judge of, the court in which the conviction took place. An electronic

recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pre-trial and discovery procedures are available to the parties **except that Alaska Rule of Civil Procedure 16.1 does not apply to post-conviction relief proceedings**. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. **The applicant bears the burden of proving all factual assertions by clear and convincing evidence.** The court may order the applicant brought before it for the hearing **or allow the applicant to participate telephonically or by video conferencing**. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

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

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

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

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

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

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

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

(5) Alaska Rule of Civil Procedure 65, by restricting the availability of injuctive relief in litigation against the state by a prisoner;

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

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

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

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

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

HB 201 (FRIVOLOUS PRISONER LITIGATION)

This bill is designed to reduce the number of frivolous suits filed by prisoners that are preventing the state and the court from giving adequate attention to legitimate lawsuits. The bill focuses on three different types of litigation misused by some prisoners: civil actions in the trial court, sentence appeals, and post-conviction relief applications. This proposed legislation is intended to ensure that offenders focus their attention on their rehabilitation and reformation, rather than on endless "recreational" litigation. It is also intended to promote the finality of judgments of conviction, preserve the sanctity of jury verdicts, and minimize the litigation of stale claims.

With respect to prisoner litigation, this bill is designed to reduce the number of frivolous suits that are preventing the state and the court from giving adequate attention to legitimate lawsuits. Frivolous litigation filed by prisoners misallocates resources of the judiciary, the Department of Law, the Public Defender's Office, the Office of Public Advocacy, the Department of Corrections, and the public. This Act requires 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 Act recognizes prisoners' right of access to the courts and reduces frivolous litigation without infringing on that right.

With respect to sentence appeals, this bill prevents defendants from appealing as excessive 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.

Finally, this bill sets limits on the ability of prisoners to challenge their convictions years after they have already pursued normal appellate procedures and lost. This bill limits these already-litigated post-conviction relief claims by prohibiting ones that are based on the erroneous admission of evidence, illegal searches and seizures, or the excessiveness of a sentence, and by requiring that a post-sentence attempt to withdraw a plea be brought as a post-conviction relief application.

HB 202 (PARENTAL ACCOUNTABILITY)

HB 202 is designed to increase parental participation and responsibility.

It authorizes a court in delinquency proceedings to require a parent to attend all of the hearings that concern their children.

It also authorizes the court to order the parents to participate in treatment when appropriate.

The bill also requires parents to be responsible for the payment of restitution for harm caused by their children, unless their children have reported as "runaways."

9-GH0028\R.1 ✓
Luckhaupt
4/28/95

AMENDMENT #1

By Rep. Porter

OFFERED IN THE HOUSE

TO: CSHB 201(FIN)

Page 1, line 1, following "litigation,":

Insert "post-trial motions,"

Page 5, following line 21:

Insert a new bill section to read:

"* Sec. 6. AS 12.55.088(a) is amended to read:

(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 [60] days of the original sentencing."

Renumber the following bill sections accordingly.

Page 10, line 9, after "AS 12.72":

Insert "or an untimely or successive motion for reduction or modification of sentence"

Page 18, line 12:

Delete "120"

Insert "180"

Page 18, following line 23:

Insert a new bill section to read:

"* Sec. 31. Rule 35, Alaska Rules of Criminal Procedure, is amended by adding new subsections to read:

(e) An indigent defendant not already represented by counsel may request the court to appoint counsel for purposes of filing a motion under this rule. If the defendant is represented by appointed counsel, counsel may file with the court and

serve on the prosecuting attorney a certificate that counsel

(1) does not have a conflict of interest;

(2) has completed a review of the facts and law related to sentence;

(3) has consulted with the applicant and, if appropriate, with trial and appellate counsel; and

(4) has determined that a motion under this subsection would not warrant relief by the court.

(f) If appointed counsel has filed a certificate under (e) of this rule, and it appears to the court that the applicant is not entitled to relief, the court shall indicate its intention to permit counsel to withdraw and, if appropriate, to dismiss the motion. The applicant and the prosecuting attorney shall be given an opportunity to reply to the proposed withdrawal or dismissal. If the defendant files a response and the court finds that a motion under this rule would not warrant relief, the court shall permit counsel to withdraw and, if appropriate, dismiss the motion. If the court finds that a motion under this rule may warrant relief, the court may direct that the proceedings continue or take other appropriate action."

Renumber the following bill sections accordingly.

Page 23, following line 21:

Insert new bill sections to read:

"* **Sec. 41.** APPLICABILITY. This Act applies to offenses committed before, on, or after the effective date of this Act.

* **Sec. 42.** SPECIAL APPLICABILITY OF SECTIONS 29 - 31. (a) Notwithstanding Rule 35, Alaska Rules of Criminal Procedure, as amended in secs. 29 - 31 of this Act, the trial court, under Rule 35(b), as amended by this Act, may reduce the sentence of a defendant sentenced before the effective date of this section if the defendant took an appeal and the sentence reduction occurs within 120 days of the day that jurisdiction is returned to the trial court under Rule 507(b), Alaska Rules of Appellate Procedure, unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief.

(b) This section has the effect of amending Rule 35, Alaska Rules of Criminal

Procedure."

Renumber the following bill sections accordingly.

Page 24, line 6:

Delete "14 and 38"

Insert "15, 40, and 41"

Delete "37 and 39"

Insert "39, 42, and 43"

SECTIONAL ANALYSIS FOR HB 201

The purpose of this bill is to reduce the amount of "frivolous litigation" filed by prisoners. The bill focuses on three different types of litigation misused by some prisoners: civil actions in the trial court, sentence appeals, and post-conviction relief applications.

Sections 1-5, 13-15, 17, 20-31, and 31 relate to civil litigation. Sections 7, 8, 11, 12, 18, 22, 27, and 28 relate to sentence appeals. Most of the remaining sections of this bill relate to post-conviction relief applications.

Section 1: Creates a new chapter in Title 09, entitled "prisoner litigation against the state." There are eight statutes in this new chapter. The first, AS 09.19.010, requires prisoners who are suing the state -- even if they are "indigent" -- to pay some part of the usual fees required when a new case is filed with the court. The fee is determined by examining the prisoner's financial situation. The prisoner must pay at least 20% of the average monthly balance maintained in the prisoner's account at the correctional facility.

~~If a prisoner pays less than full filing fees,~~ The next three sections (AS 09.19.015, AS 09.19.017, AS 09.19.019) prohibit the prisoner's complaint or appeal from being accepted unless the court finds that it is not frivolous.

AS 09.19.020 limits the circumstances in which a court may stay imposition of a disciplinary decision of the Department of Corrections. AS 09.19.030 prohibits a court from granting injunctive relief that places burdens on the state beyond what is required by statute or by the constitution.

AS 09.19.040 specifies that the Civil Rule's provisions for automatic discovery do not apply in prisoners' suits filed against the state. The last statute, AS 09.19.900 defines the terms "prisoner." + litigation against the state.

Section 2: Technical amendment needed to conform with section 4.

Section 3: Technical amendment needed to conform with section 4.

Section 4: Amends AS 09.38.030 to add a new subsection (f), which makes it easier for the state to collect judgments awarded against a prisoner by eliminating certain exemptions. An order of priority is set out in the statute, starting with child support payments and restitution ordered to be paid by the prisoner.

Section 5: Technical amendment needed to conform with section 4.

Section 6: Amends one of the state's bail statutes to specify that a prisoner who files an application for post-conviction relief cannot be released on bail until all of the prisoner's convictions have been vacated.

Section 7: Amends the felony sentencing statute to provide that sentence appeals cannot be filed in felony cases in which less than two years of unsuspended imprisonment was imposed by the court. Furthermore, a defendant cannot appeal that portion of a sentence that the defendant agreed to in a plea agreement with the state.

Section 8: Amends the misdemeanor sentencing statute to provide that sentence appeals cannot be filed in misdemeanor cases in which less than 120 days of unsuspended imprisonment was imposed by the court. Furthermore, a defendant cannot appeal that portion of a sentence that the defendant agreed to in a plea agreement with the state.

Section 9: Adds to the Criminal Code in Title 12 a new chapter, entitled "post-conviction relief procedures for persons convicted of criminal offenses." AS 12.72.010 sets out the scope of claims that may be raised in a petition for post-conviction relief, most of which are currently included in Criminal Rule 35.1. AS 12.72.020 specifies certain limitations on the availability of post-conviction relief, such as that the claim was decided on its merits in a previous proceeding. AS 12.72.030 specifies that a claim for post-conviction relief shall be filed with the court where the underlying action was filed. AS 12.72.040 imposes the "clear and convincing evidence" standard in post-conviction relief proceedings. (present law is "preponderance"

Section 10: Amends AS 18.85.100 to specify that an indigent person is entitled to appointed counsel for purposes of bringing a timely application for post-conviction relief, but not for purposes of filing untimely or successive applications or appeals from denied applications.

Section 11: Amends AS 22.07.020(b), the jurisdictional statute for the court of appeals, to specify that sentence appeals may be taken only from sentences imposing more than two years of unsuspended incarceration.

Section 12: Amends AS 22.10.020(f), the jurisdiction statute relating to appeals in the superior court, to specify that sentence appeals may be taken only from district court sentences imposing more than 120 days of unsuspended incarceration.

Section 13: Amends AS 33.30 to set out standards for courts reviewing prisoner disciplinary decisions, and to require a prisoner to allege specific facts establishing a violation of the prisoner's fundamental constitutional rights.

Section 14: Amends Administrative Rule 10, the rule governing exemptions from filing fees, to exclude its application to prisoner suits against the state, which instead are governed by new AS 09.19.

Section 15: Amends Appellate Rule 204(b), governing the procedure for filing appeals, to recognize that prisoners filing cases against the state may pay less than full filing fees under AS 09.19.010.

Section 16: Repeals and reenacts Appellate Rule 208, relating to the custody of prisoners in post-conviction relief proceedings, to specify that appellate courts may not grant bail to an applicant for post-conviction relief, but instead must remand the issue to the trial court.

Section 17: Amends Appellate Rule 209, addressing appeals at public expense, to specify that the waiver of filing fees in appeals from prisoners' suits against the state is governed by new AS 09.19.

Section 18: Repeals and reenacts Appellate Rule 215, governing sentence appeals, to specify that a defendant has no right to appeal a sentence as excessive if the sentence does not exceed two years' unsuspended incarceration for a felony or 120 days for a misdemeanor, nor may a defendant appeal a sentence that was imposed in accordance with a plea agreement under Criminal Rule 11.

Section 19: Amends Appellate Rule 521, relating to the proper construction of the appellate rules, to specify that appellate courts may not accept appeals filed more than 60 days late or petitions for review filed more than 30 days late.

Section 20: Amends Appellate Rule 603, regarding stays, to specify that prisoner disciplinary sanctions may not be stayed by a court unless certain standards are met, including that the prisoner must allege a violation of a fundamental constitutional right and must be likely to succeed on the merits.

Section 21: Amends Appellate Rule 604, governing records on appeal, to specify that the record in an appeal from a prisoner disciplinary decision will be based on cassette recordings, rather than transcripts, of the proceedings.

Section 22: Amends Criminal Rule 11 to specify that defendants who enter into plea agreements waive the right to appeal as excessive a sentence, or that part of a sentence, to which they agreed.

Section 23: Amends Criminal Rule 11 to specify that a court that accepts a plea agreement will sentence the defendant in accordance with the plea agreement.

Section 24: Amends Criminal Rule 11 to specify that the prosecuting attorney is not bound by a plea agreement that is rejected by the court.

Section 25: Amends Criminal Rule 11 to specify that a defendant may (only) withdraw a plea in a criminal case before sentence is imposed; thereafter, a defendant who wants to withdraw the plea must file for post-conviction relief.

Section 26: Amends Criminal Rule 33, relating to new trials, to specify that a court may not grant a new trial in a criminal case on the basis that the jury's verdict is contrary to the weight of the evidence. It also amends this rule to reduce from two years to 180 days the length of time during which a motion for new trial may be filed on the basis of newly discovered evidence.

Section 27: Repeals and reenacts Criminal Rule 35(a) to provide that the court may correct an illegal sentence at any time, which is the in the present rule; eliminates portion of rule which allows reduction of sentence within 120 days of imposition

Section 28: Repeals and reenacts Criminal Rule 35(b) to specify that an appellate court may not modify or reduce a sentence below that which the defendant agreed to in a plea agreement; also provides that court may only modify or reduce within 60 days of ~~imposition~~ written judgment; the current rule allows modification at any time for changed circumstances

Section 29: Amends Appellate Rule 35.1, relating to post-conviction relief, to conform this rule with new AS 12.72, set out in section 9 supra.

Section 30: Amends Criminal Rule 35.1 to indicate where and when petitions for post-conviction relief are to be filed.

Section 31: Amends Criminal Rule 35.1 to specify that if an application for post-conviction relief challenges a Department of Corrections or Parole Board decision, it must set out certain information, including the nature of the proceedings or challenged decision, the date of the proceedings, the relief desired, and the facts and grounds on which the application is based.

Section 32: Amends Criminal Rule 35.1 to specify that an applicant for post-conviction relief must establish factual assertions by clear and convincing evidence. This section also authorizes courts to allow defendants to participate in a hearing telephonically or by video conferencing. It also specifies that the automatic disclosure provisions of the Civil Rules do not apply to these proceedings.

Section 33: Repeals Criminal Rule 35.1(h), relating to the waiver or failure to assert claims in post-conviction relief applications, which is now addressed in AS 12.72, set out in section 9 supra.

Section 34: Specifies that defendants have one year after the effective date of this bill within which to file a claim for post-conviction relief under AS 12.72.

Section 35: Specifies that the exemption for prisoner litigation from the automatic disclosure provisions of the Civil Rules take effect only when and if these automatic disclosure provisions are enacted by the Supreme Court.

Section 36: Specifies that this Act takes effect on July 1, 1995, if it receives the two-thirds majority vote of each house required when court rules are amended by the legislature.

CS FOR HOUSE BILL NO. 201(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/24/95
Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

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

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

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

CHAPTER 19. PRISONER LITIGATION AGAINST THE STATE.

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

circumstances as described in this section.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 09.19.030. 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. 09.19.040. 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. 09.19.050. 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 a civil action or an appeal from a civil action or from the final decision of an administrative agency that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 72. POST-CONVICTION RELIEF PROCEDURES FOR PERSONS CONVICTED OF CRIMINAL OFFENSES.

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

conviction relief if the person claims

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

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

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

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

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

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

(7) that

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

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

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

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

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

under the Alaska Rules of Criminal Procedure; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) was not known within

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

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

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

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

(C) is not impeachment evidence; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 33.30.295. REVIEW OF PRISONER DISCIPLINARY DECISIONS. (a) A prisoner may obtain judicial review by the superior court of a final disciplinary decision by the department only if the prisoner alleges specific facts establishing a violation of the prisoner's fundamental constitutional rights that prejudiced the prisoner's right to a fair adjudication. An appeal shall be commenced by the prisoner filing a notice of appeal and other required documents in accordance with AS 09.19 and the applicable rules of court governing administrative appeals that do not conflict with AS 09.19. Unless the appeal is not accepted for filing under AS 09.19.010 or is dismissed under AS 09.19.020, a record of the proceedings shall be prepared by the department, consisting of the original papers and exhibits submitted in the disciplinary process and a cassette tape of the disciplinary hearing. The record shall be prepared and transmitted in accordance with the applicable rules of court governing administrative appeals.

(b) A disciplinary decision may not be reversed

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

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

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

support the decision reached.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the cost bond or deposit required by Rule 204(c)(1);

(B) a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's motion to the superior court for approval of a supersedeas bond or other security;

(C) a motion for waiver of cost bond; or

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

(6) a designation of transcript if the party intends to have portions of the electronic record transcribed pursuant to Rule 210(b); and

(7) proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on

(A) the clerk of the trial court which entered the judgment or order being appealed; and

(B) all other parties to the trial court action.

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

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

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

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

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

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

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

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

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

(1) if the sentence was

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

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

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

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

appeal.

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

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

(1) the notice of appeal to be filed more than 60 days late; or

(2) a petition for review or petition for hearing to be filed more than 60 days late.

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

(6) Stay in Prisoner Disciplinary Appeals. The court may not stay imposition of sanctions arising from a disciplinary decision of the Department of Corrections unless the court finds that the prisoner has alleged a violation of a fundamental constitutional right and is likely to succeed on the merits of 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. In evaluating the stay motion, the court may consider documents and affidavits offered by either party, and shall consider the stay motion without waiting for the record to be prepared.

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

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

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

paragraph to read:

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

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

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

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

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

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

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

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

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

manifest injustice.

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

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

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

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

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

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

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

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

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

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

RULE 33. NEW TRIAL. **(a) Grounds.** The court may grant a new trial to a defendant if required in the interest of justice.

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

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

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

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

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

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

(b) Modification or Reduction of Sentence. The court

(1) may modify or reduce a sentence within 120 days of the distribution of the written judgment upon a motion made in the original criminal case;

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) that

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

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

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

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

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

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

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

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

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

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

(7) that

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

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

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

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

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

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

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

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

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

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

to the applicant for completion.

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

(e) Indigent Applicant.

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

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

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

(B) a certificate that counsel

(i) does not have a conflict of interest;

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

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

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

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

(1) **The state shall file an answer or a motion within 45 days of service of an original, amended, or supplemental application filed by counsel or by an applicant who elects to proceed without counsel, or of a notice of intent to proceed on the original application under (e)(2)(A) of this rule. The applicant shall have 30 days to file an opposition, and the state shall have 15 days to file a reply. The motion, opposition, and reply may be supported by affidavit.** [WITHIN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15, 40+41 39, 42 + 43

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

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

Conforming to the amended bill

HB

202

TONY KNOWLES
GOVERNOR

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 27, 1995

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

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to parental participation and accountability, and the enforcement of restitution orders, in juvenile delinquency proceedings. This bill amends the statutes governing orders in delinquency proceedings to authorize the court to require that parents or guardians of juvenile offenders personally participate in treatment when appropriate, to require attendance of those persons at hearings that concern their children, and to require that parents be responsible for payment of restitution for harm caused by their children. The bill also specifies that the recipient of such a restitution order may enforce payment under the civil code, AS 09.35. as if the order were a civil judgment.

This bill is intended to increase the effectiveness of the juvenile justice system by increasing parental or guardian involvement and responsibility. Juvenile courts currently lack authority to compel parents or guardians to engage in treatment even though the parent's or guardian's behavior may be associated with the juvenile's delinquent behavior. The bill not only requires parental or guardian participation in treatment, but also contains a provision that makes the parent or guardian responsible for covering the cost of that treatment, either through using insurance or other such resource, or paying for the treatment. Under certain circumstances, if the Department of Health and Social Services pays for the treatment, that department may claim the parent's or guardian's permanent fund dividend in reimbursement. It is intended that the provisions in this bill will be enforceable by the contempt powers of the court under AS 09.50.

The provision in sec. 4 of the bill, which will allow enforcement of a restitution order under the civil code, parallels a provision that already exists in AS 12.55.051 of the criminal code for restitution orders entered in adult cases. This will simplify the process

for collection under such a restitution order. A victim of a crime perpetrated by a juvenile will be able to seek recovery under a restitution order even after the juvenile reaches age 18 and the juvenile court typically would no longer have jurisdiction over that person.

I urge your favorable action on this bill.

Sincerely,

Tony Knowles
Governor

DEPARTMENT OF LAW

PROPOSED AMENDMENT TO

HB 202 (PARENTAL ACCOUNTABILITY)

Page 5, line 12: Add the following after the semi-colon:

however, a parent of a minor who is a runaway or missing person is not liable under this subsection for the acts of the minor that are committed by the minor after the parent has made a report to a law enforcement agency, as authorized by AS 47.10.141(a), that the minor has run away or is missing; "runaway or missing minor" means a minor who a parent reasonably believes is absent from the minor's residence for the purpose of evading the parent or who is otherwise missing from the minor's usual place of abode without the consent of the parent.

TONY KNOWLES
GOVERNOR

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(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
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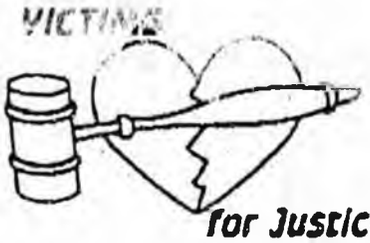
Governor



April 4, 1995

Honorable Tony Knowles
Governor
State of Alaska
State Capital Building
Juneau, AK 99801

Dear Gov. Knowles:

Victims for Justice (VFJ) would like to take the time to thank you for introducing HB 201 and HB 202.

HB 201 will hopefully reduce the river of frivolous lawsuits filed by prisoners, as well as streamlining the appellate process. By doing so, the system will become more efficient and far more friendly to the victims of crime, who more often than not do not have the time to learn how the various systems within our judicial process work. "Justice delayed is justice denied" is a complaint that VFJ is very familiar with. Monthly, the delays in a case are due to the overworked court system, and by eliminating many of the frivolous lawsuits, we will be able to deliver justice to both the victims and the community at large in a more timely fashion.

HB 202, dealing with parental responsibility for both actions of their children, and restitution, is long overdue. Unless we as a society force both juveniles to accept responsibility for their actions, and parents to face their responsibility as parents, we will have a very difficult time of stemming the evergrowing tide of juvenile crime. This bill will give the latitude to judges to make the parents stand up and take notice of what their children are doing. It will force parents to learn not only the nitty gritty details of their kids activities, but also to possibly shoulder some of the financial burden.

It is often said that you cannot legislate morality, and that if parents don't care about their kids, then there is nothing that government can do that will make them. Although this may be partially true, we as citizens owe it to the victims of crime to try and educate the parents of juvenile criminals what the impact that their child has had on the community.

Sincerely,

Ralph Samuels
Victims for Justice

619 E. Fifth Avenue • Anchorage, AK 99501 • Phone: (907) 278-0977 • Fax: (907) 258-0740

Anchorage Daily News Monday, March 6, 1995

The crime bill

Good ideas, but more are needed

Crime hits us all. Maybe our car has been stolen. Maybe we know somebody whose home has been broken into, who lives with a family member who has been assaulted — or lives without a family member who's been murdered.

We pay more property tax for police protection, or worry more when we drive to the store after dark for a gallon of milk. Nobody's family escapes completely.

The ones doing the thieving, the drug dealing and the murdering come from families, too. The crime bill that Gov. Tony Knowles delivered to the legislature this past Monday acknowledges that crime is a family problem.

The governor has a long list of valuable ideas for demanding more responsibility from juvenile criminals and their families. He's trying to do it inexpensively, without stuffing more bodies into our overcrowded prisons. He's off to a good start, but he could offer more ideas for helping stop youth crime before it starts.

The governor's bill uses driver's licenses as an inexpensive weapon against juvenile crime. Teens who carry weapons illegally would be subject to losing their license for a time, as would teens who drink and drive.

Most teens do treasure the freedom that a driver's license brings, and the threat of losing it will likely deter many kids who may otherwise have been tempted to drink. But is there good reason to believe that somebody who packs a gun illegally is going to be stopped from driving because he or she doesn't have the proper piece of paper? In fact, it seems likely that a lot of the kids carrying weapons are the same ones stealing cars.

Along with providing more severe penalties for gang activities, the bill would allow courts to require parents to attend hearings for their children and to be responsible for restitution for harm caused by their children.

Good. Let's get these parents involved. If some of them had been to more school conferences and hockey games, chances are they wouldn't need to be in court now. There's nothing like a threat to the pocketbook to catch the attention of parents who lack personal or civic responsibility.

Still, if parents must pay restitution for harm done by their children, how do children learn that they are responsible for their own actions? The law must not be used as an opportunity for vengeful adolescents to hurt their parents.

The bill follows the Federal Gun-Free Schools A to require school districts to expel for one year student who brings a gun to school. Almost anythin is worth doing to keep kids with guns from roamin the halls at school, but they'll have lots of free time fill somewhere (maybe in your neighborhood?). Th bill doesn't say what we'll do with these kids afte they've been expelled.

The governor's bill also addresses adults who drin and drive. People with drunken-driving convictions other states — even where definitions of DWI differ would have their convictions count toward Alaska mandatory minimum sentences for repeat D convictions.

One provision that many taxpayers will no doub cheer would cut down on "frivolous and recreational litigation by inmates. Alaska now has four stat attorneys working full-time with prisoner litigatio — and the case load has grown by 40 percent in th past two years.

Charging nominal filing fees to deter nuisance suit is a good idea, but we must be careful to let prisoner air legitimate grievances in court. Our justice systen is not perfect.

Gov. Knowles' bill is a good start to dealing wit Alaska's growing crime problem even though a vit element — prevention — is missing. Wouldn't it b great if we could figure out what kids and the families need *before* they start bringing weapons t school? If we could provide children with alternative to gangs?

If you support the governor's plan, or parts of it, c have ideas of your own, don't hold back: Now's th time to let your legislators know what you think.

Cook
4/10/95

CS FOR HOUSE JOINT RESOLUTION NO. 9(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Kubina, Therriault, Mulder

A RESOLUTION

Requesting the governor to file suit in the United States Supreme Court against the United States government alleging violations of the civil rights of Americans listed as prisoners of war or missing in action in Southeast Asia, demanding that documents concerning these individuals be released; and requesting the other states to join in this suit.

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

WHEREAS there is continuing controversy concerning Americans who were listed as prisoners of war (POW) or missing in action (MIA) while serving in the Southeast Asian nations of Vietnam, Laos, and Kampuchea (formerly Cambodia); and

WHEREAS the United States government has stated that all of our POWs have been returned; and

WHEREAS a top secret Vietnamese report dating from 1972 by General Tran Von Kwang, Deputy Chief of Staff for the North Vietnamese Army reported that in September of 1972 Hanoi held 1,205 American prisoners; and

WHEREAS only 591 American POWs have been released under the 1973 Peace

Settlement, which means that, based on General Kwang's own report, at least 614 POWs were not returned or accounted for; and

WHEREAS Vietnamese nationals who have moved to the United States have reported the appearance of American prisoners still being held in Southeast Asia; and

WHEREAS Boris Yeltsin, President of Russia, let it be known that the Soviet Union took members of the American armed forces into the former Soviet Union during the Vietnam War and that there is no adequate explanation of the whereabouts of these Americans; and

WHEREAS there are still hundreds of documents concerning this issue held by the United States Department of Defense that have not been released to the public, yet individuals within the federal intelligence agencies have tried to discredit information concerning the existence of American POWs instead of demanding a full accounting from Vietnam, Laos, Kampuchea, North Korea, China, and the former Soviet Union; and

WHEREAS there are two missing and unaccounted for servicemen in Southeast Asia from Alaska; and

WHEREAS the right to liberty--that inherent and inalienable right endowed by our Creator, as guaranteed by the Declaration of Independence and the Constitution of the United States--is being denied to any American being held prisoner as a result of the Vietnam War; and

WHEREAS the executive branch of the federal government has not even attempted to negotiate the release of Americans that may still be held prisoner as a result of the war in Southeast Asia and is not actively searching for remaining Americans; and

WHEREAS the lower courts of the federal judiciary have not granted relief to American soldiers listed as POWs or MIAs; and

WHEREAS the United States Supreme Court is the last bastion that an American citizen has for redress of grievances and protection of constitutional liberties; and

WHEREAS the United States Constitution in art. III, sec. 2, states, "In all Cases affecting Ambassadors, other public Ministers and Counsels and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction.";

BE IT RESOLVED that the Alaska State Legislature respectfully requests the governor to authorize suit in the United States Supreme Court against the United States government, especially the Department of Defense and the intelligence agencies, and against

the ambassadors or other public ministers and counsels of the governments of Vietnam, Laos, Kampuchea, Russia, North Korea, and China, alleging violations of the civil rights of the people of Alaska, and especially alleging the violation of the right to life, liberty, and the pursuit of happiness of Thomas E. Anderson, USMC, and Howard M. Koslosky, USN; and be it

FURTHER RESOLVED that the lawsuit demand that the Department of Defense, U.S. intelligence agencies, and the governments of Vietnam, Laos, Kampuchea, Russia, North Korea, and China be ordered to turn over all documents concerning Americans listed as POWs or MIAs as a result of the Vietnam War; and be it

FURTHER RESOLVED that the lawsuit is not intended to solicit a ruling or an opinion definitively declaring the POW/MIA issue moot, but rather, it is intended to seek a mandate that all documents and other information concerning POWs and MIAs be released to the public so that the fate or location of all members of the service who were POWs or MIAs may be proven beyond a reasonable doubt; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the other 49 states of the United States to join in this action on behalf of their citizens being held in captivity as a result of the war in Southeast Asia.

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and to the governors and the presiding officers of the houses of the legislatures of each of our sister states.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY
Mailing Address
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

April 3, 1995

Analysis HB 130, version D.

HB 130 is a reflection of the public concerns created when the Legislature delegates authority to create laws, without review or approval by an elected official.

HB 130 does not solve everything wrong with the regulation process. It has been streamlined and is a product of many conversations with the administration, the Department of Law, and the private sector. There is more to do.

HB 130 achieves three things:

1) Places an elected official at the top of the process of creating regulatory law.

2) Carries the public comment process one step further, establishing a track for the use or rejection of written public comments.

3) Prohibits ADEC from outlawing an activity by regulation instead of by legislation. The agency is not allowed to create regulations that raise the cost of compliance so high a person can no longer afford to conduct a legal activity.

Section by section analysis:

Section 1.

Closes the loop between the Legislative Regulation Review Committee and the elected official over viewing regulations. The Regulation review committee comments become one of the reasons the governor of Lieutenant Governor can return a regulation to an agency.

Section 2.

House keeping, language added to refer to Section 3.

Section 3.

The governor is established as the elected official responsible for regulations. The governor may only delegate this authority to the Lieutenant Governor. This review occurs after the regulations are adopted by the "line" agencies. Boards and Commissions are exempt from this review.

I believe the legislature must clearly place an elected official at the top of the regulatory food chain. The Legislature has the authority to delegate rule making authority. With the delegation of authority we must also delegate responsibility. This responsibility must stop in the Governor or Lt. Governor's office, not an appointed commissioner, director, of staff person at the bottom of the chain of responsibility.

As Legislators we must take a draft of a bill in front of a committee for a hearing. This hearing includes both review and approval of the bill. Regulators do not have to get anyone's approval. They are now just required to hold a hearing. Period. They are not even required to respond to the testimony they hear. No additional changes need be considered.

Section 4.

HB 130 requires agencies, after the public hearing period has ended, to record the use or rejection of written public comments.

This is needed to eliminate the "black hole" effect people feel after testifying at a hearing. It should help reduce the frustration people feel with a system that seems to ignore their efforts to input testimony. It is not an expense, it is a **courtesy.**

It is true that some agencies respond to public comment, and it is true that no one knows how or what comment they responded to. HB 130 accomplishes this task.

Section 5, 6, 7.

Housekeeping.

Section 8.

Economically Feasible:

In response to suggestions from the administration we shifted from a blanket requirement that all regulations be "economically feasible" to just one agency. As the administration pointed out, the Department of Natural Resources, Division of Governmental Coordination, and several other agencies, are natural targets for such a requirement.

In this version we are limiting the requirement for "economically feasible" regulations to the Department of Environmental Conservation.

HB 130 stops the Department of Environmental Conservation from outlawing an activity by simply raising the cost of complying with regulations so high that it is out of the reach of most persons.

Criminal laws are quite clear. The Legislature prohibits many activities, including robbery, burglary, etc. These activities are proscribed by Law, by the Legislature.

Agencies, however, are supposed to regulate lawful activities. Regulations are not supposed to prohibit people from lawful activities. Yet they do. They do so by raising the cost of compliance, or setting requirements that cannot be attained.

HB

203

H USE COMMITTEE REPOI

3/16/95

(7)
Date Referred: February 27, 1995
Date of Committee Action: 3/8/95

FURTHER REFERRALS: Judiciary

The TRANSPORTATION Committee considered: HB 203

HOUSE BILL NO. 203 PREVIOUS CONVICTIONS FOR DWI OFFENSES

"An Act relating to the meaning of the phrase "previously convicted" as that phrase applies to the operation of a motor vehicle, commercial motor vehicle, aircraft, or watercraft while intoxicated."

recommends it be replaced
with the following committee substitute _____

[ ] the same title
[ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[X] zero fiscal note(s) (2) Admin, Corrections
Law, P.S. 2/27/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
E P MacLean	MacLean	✓			
Beverly Masek	MASEK			✓	
W.K. Williams	Williams	✓			
Alan Sanders	Sanders	✓			
Gary L. Davis	G. DAVIS			✓	
		(3)		(2)	

CHAIR'S SIGNATURE Gary L. Davis _____
G. Davis

FISCAL NOTE

No. 5

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: HB 203
(H) Publish Date: 2/27/95

Revision Date: _____ Dept. Affected: Public Safety

Title: "An Act clarifying 'previously convicted' for determining repeat offenders of the D.W.I. Laws." Component: DPS Statewide Support / Commissioner's Office

Sponsor: Governor

Requestor: _____ 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: 2/16/95
Approved by Commissioner: _____ Date: 2-17-95
Agency: Ronald L. Otte, Dept. of Public Safety

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No. 4

FISCAL NOTE

Bill Version: HB 203

(H) Publish Date: 2/27/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "...revocation of a minor's license to drive... illegal use or possession of a firearm."
Sponsor: Rules By the Governor's Request
Requester: Governor's Office/OMB

Dept. Affected: Department of Law
BRU: Prosecution
Component: All
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)

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	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 the state's "use it, lose it" law, AS 28.15.185, to provide for the revocation of a juvenile's driver's license, privilege to drive, or privilege to obtain a driver's license if the juvenile is convicted or adjudicated of an offense that involves the illegal use or possession of a firearm. The revocation of a license is primarily an administrative process within the Department of Public Safety. The Department of Law's involvement consists of representing the Department of Public Safety (when needed) in an appeals hearing to review a revocation. Such involvement, since the state's revocation penalties took effect, regarding alcohol and drugs, has been minimal. Consequently, a fiscal impact is not expected.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: 2/16/95

Richard I. Pegues /FOR/

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 2/16/95

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HB 203

TONY KNOWLES
GOVERNOR

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 27, 1995

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

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the meaning of the phrase "previously convicted" for purposes of this state's driving while intoxicated (DWI) laws. Alaska law tries to discourage repeat offenders by treating them more harshly than first offenders. In keeping with this public policy, the mandatory minimum sentences for second, third, and subsequent drunk driving offenses require more jail time, higher fines, and longer revocations of driving privileges. A repeat DWI offender also is subject to forfeiture of the vehicle or aircraft involved in the commission of the offense, and is precluded from being granted limited license privileges during the time that person's driver's license is revoked.

In Burnette v. Municipality of Anchorage, 823 P.2d 10 (Alaska App. 1991), an Alaska court held that a defendant who had a prior DWI conviction from Oregon was not subject to Alaska's enhanced mandatory minimum sentence for second offenses because Oregon's DWI law was less restrictive than Alaska's law. In Oregon, and many other states, a person is presumed intoxicated if there is more than .08 percent by weight of alcohol in the person's blood (BAC). Alaska still uses the .10 percent BAC standard. Because it is possible for a person in Oregon or one of these other states to be convicted of drunk driving with a lower BAC than that required in Alaska, our courts have held that convictions from these states cannot be counted when deciding what is the proper mandatory minimum sentence to impose. This result occurs even if the court records from the other state show that the person's BAC was not .08 or .09 percent, but was actually .10 percent or higher at the time of the offense.

This is not fair. A person who has been convicted of drunk driving in one state should be treated like a repeat offender when convicted of drunk driving in another state. The person should not be treated like a first offender over and over again because of technical differences between the states' laws. Drunk drivers are dangerous and need to be kept off of our roads.

This bill will help do that. It amends DWI-related provisions in AS 28 to make clear that the phrase "previously convicted" includes a conviction under a law of another state even if that law allows conviction with a lower BAC level than that used in Alaska. Whether another state's law allows a DWI conviction for .08 or .09 BAC levels, it is still a conviction for drunk driving and it should count as one.

I urge your favorable action on this bill.

Sincerely,

Tony Knowles
Governor

FISCAL NOTE

No. 3
Bill Version: HB 203
(H) Publish Date: 2/27/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: An Act relating to the meaning of the phrase "previously convicted".....
Sponsor:
Requester: Governors Office

Dept. Affected: Corrections
BRU:
Component:
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 succeed in clarifying the meaning of "previously convicted" and the intent of including conviction of similar offenses in other jurisdictions. The Department of Corrections is impacted only to the extent that offenders convicted in other states were convicted under statutes requiring less than a .10 BAC and to the extent that those convictions are discovered at the time of conviction in Alaska.

No data is available to test the impact of this bill on DOC, however, prior to 1991 these cases would have been included in the conviction data without reference to the BAC. Therefore, in any average case numbers would include some years in which these added cases would be included. The numbers are small and the impact, if any will be negligible.

Prepared by: Jerry Shriner
Phone: 465-5582
Division:
Date: 2/16/95

Approved by Commissioner: Margaret N. Pooler
Date: 2/16/95
Agency: Department of Corrections

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FISCAL NOTE

No. 2

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: HB 203
(H) Publish Date: 2/27/95

Revision Date:
Title: "An Act relating to the meaning of 'previously convicted' in determining repeat drunk drivers . . ."
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	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	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.)

No fiscal impact.

Prepared by: John B. Salemi, Director
Division: Public Defender Agency
Phone: (907) 264-4412
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2-11-95

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FISCAL NOTE

No. 1

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: _____
(H) Publish Date: 2-27-95

Revision Date: _____
Title: "An Act relating to the meaning of 'previously convicted' in determining repeat drunk drivers..."
Sponsor: Governor
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.)

There is no fiscal impact.

Prepared by: Brant McGee Date
Division: Office of Public Advocacy
Phone: 274-1684
Date: 2-17-95

Approved by Commissioner: Mark Boyer Date
Agency: Department of Administration
Date: 2-17-95

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HB 203

TONY KNOWLES
GOVERNOR

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 27, 1995

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

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the meaning of the phrase "previously convicted" for purposes of this state's driving while intoxicated (DWI) laws. Alaska law tries to discourage repeat offenders by treating them more harshly than first offenders. In keeping with this public policy, the mandatory minimum sentences for second, third, and subsequent drunk driving offenses require more jail time, higher fines, and longer revocations of driving privileges. A repeat DWI offender also is subject to forfeiture of the vehicle or aircraft involved in the commission of the offense, and is precluded from being granted limited license privileges during the time that person's driver's license is revoked.

In Burnette v. Municipality of Anchorage, 823 P.2d 10 (Alaska App. 1991), an Alaska court held that a defendant who had a prior DWI conviction from Oregon was not subject to Alaska's enhanced mandatory minimum sentence for second offenses because Oregon's DWI law was less restrictive than Alaska's law. In Oregon, and many other states, a person is presumed intoxicated if there is more than .08 percent by weight of alcohol in the person's blood (BAC). Alaska still uses the .10 percent BAC standard. Because it is possible for a person in Oregon or one of these other states to be convicted of drunk driving with a lower BAC than that required in Alaska, our courts have held that convictions from these states cannot be counted when deciding what is the proper mandatory minimum sentence to impose. This result occurs even if the court records from the other state show that the person's BAC was not .08 or .09 percent, but was actually .10 percent or higher at the time of the offense.

This is not fair. A person who has been convicted of drunk driving in one state should be treated like a repeat offender when convicted of drunk driving in another state. The person should not be treated like a first offender over and over again because of technical differences between the states' laws. Drunk drivers are dangerous and need to be kept off of our roads.

This bill will help do that. It amends DWI-related provisions in AS 28 to make clear that the phrase "previously convicted" includes a conviction under a law of another state even if that law allows conviction with a lower BAC level than that used in Alaska. Whether another state's law allows a DWI conviction for .08 or .09 BAC levels, it is still a conviction for drunk driving and it should count as one.

I urge your favorable action on this bill.

Sincerely,

Tony Knowles
Governor

HB

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> In 1993 there were 24,310 licensed drivers in Alaska, between the ages of 16 years through 20 years of age, which was 6.2% of the State's licensed drivers. Yet they were the driver in 12.9% of the total vehicle crashes.

> These are new drivers with little behind-the-wheel experience. When alcohol is combined the chance of them becoming involved in a fatal or serious injury accident multiplies greatly.

> In 1993, 88 fatal crashes occurred, 28 of which had a driver between 16 through 20 years of age. In 9 of the fatal crashes or 32.1% involving youth, alcohol was a contributing factor.

> The continuing abuse of alcohol and other drugs is exacting a horrific toll on Alaskan youth. Ten Alaskan children and young adults (newborn to 20 years) were killed in alcohol related crashes in 1993. Using a simple average of 50 years per fatality, a minimum of 500 years of lost life productivity (10 X 50) can be calculated for just this one year.

> The monetary damage, expressed as a percent of total societal costs, is more than twice as great for crashes in which there is alcohol involvement. Alcohol was a factor in slightly less then 11 percent of all traffic crashes, yet those crashes accounted for almost 21 percent of the societal costs attributed to traffic collisions in Alaska during 1993.

Alaska Highway Safety Planning Agency
March 16, 1995

YOUTH CRASH STATISTICS ~ 1979 thru 1993

	FATAL YOUTH CRASHES				ALCOHOL-RELATED					
Year	Total Crashes	Youth Crashes	< Diff >	% Total Crashes	Total Alcohol Crashes	Youth Alcohol Crashes	Alcohol < Diff >	Youth % of Total Alcohol Crashes	Youth Crash < Diff >	Alcohol % of Youth Crashes
1979	81	28	53	34.6%	45	19	26	42.2%	9	67.9%
1980	79	15	64	19.0%	43	7	36	16.3%	8	46.7%
1981	90	19	71	21.1%	50	17	33	34.0%	2	89.5%
1982	98	9	89	9.2%	54	9	45	16.7%	0	100.0%
1983	135	40	95	29.6%	53	13	40	24.5%	27	32.5%
1984	123	37	86	30.1%	61	14	47	23.0%	23	37.8%
1985	107	27	80	25.2%	58	12	46	20.7%	15	44.4%
1986	89	14	75	15.7%	46	5	41	10.9%	9	35.7%
1987	70	15	55	21.4%	40	6	34	15.0%	9	40.0%
1988	86	20	66	23.3%	43	6	37	14.0%	14	30.0%
1989	79	11	68	13.9%	44	7	37	15.9%	4	63.6%
1990	92	8	84	8.7%	47	3	44	6.4%	5	37.5%
1991	90	13	77	14.4%	45	7	38	15.6%	6	53.8%
1992	89	21	68	23.6%	50	9	41	18.0%	12	42.9%
1993	88	28	60	31.8%	37	9	28	24.3%	19	32.1%
Total	1,396	305	1,091	21.8%	716	143	573	20.0%	162	46.9%

Year	YOUTH DEATHS				ALCOHOL-RELATED					
	Total Deaths	Youth Deaths	< Diff >	% Total Deaths	Total Alcohol Deaths	Youth Alcohol Deaths	Alcohol < Diff >	Youth % of Total Alcohol Deaths	Youth Death < Diff >	Alcohol % of Youth Deaths
1979	91	32	59	35.2%	69	23	46	33.3%	9	71.9%
1980	88	18	70	20.5%	64	8	56	12.5%	10	44.4%
1981	100	25	75	25.0%	76	23	53	30.3%	2	92.0%
1982	107	9	98	8.4%	54	9	45	16.7%	0	100.0%
1983	150	45	105	30.0%	64	15	49	23.4%	30	33.3%
1984	137	37	100	27.0%	70	14	56	20.0%	23	37.8%
1985	127	30	97	23.6%	69	14	55	20.3%	16	46.7%
1986	101	14	87	13.9%	50	6	44	12.0%	8	42.9%
1987	76	17	59	22.4%	44	7	37	15.9%	10	41.2%
1988	97	22	75	22.7%	48	6	42	12.5%	16	27.3%
1989	84	12	72	14.3%	46	8	38	17.4%	4	66.7%
1990	98	8	90	8.2%	48	3	45	6.3%	5	37.5%
1991	101	16	85	15.8%	50	9	41	18.0%	7	56.3%
1992	108	25	83	23.1%	61	10	51	16.4%	15	40.0%
1993	118	34	84	28.8%	49	10	39	20.4%	24	29.4%
Total	1583	344	1,239	21.7%	862	165	697	19.1%	179	48.0%

1993 DRIVERS IN TRAFFIC CRASHES

Age Group	1993 Licensed Drivers	% Of Licensed Drivers	1993 Crash Drivers	% Represented in Total Crashes
< 16	1	0.0%	75	0.3%
16-20	24,310	6.2%	3,257	12.8%
21-25	41,861	10.6%	3,195	12.6%
26-30	48,780	12.4%	2,919	11.5%
31-35	57,756	14.7%	3,123	12.3%
36-40	58,506	14.9%	2,902	11.4%
41-45	50,586	12.8%	2,416	9.5%
46-50	37,471	9.5%	1,622	6.4%
51-55	25,819	6.6%	1,094	4.3%
56-60	17,226	4.4%	733	2.9%
61-65	12,396	3.1%	490	1.9%
66-70	8,979	2.3%	370	1.5%
71 +	10,236	2.6%	439	1.7%
Unknown	4	0.0%	2,740	10.8%
Totals	393,931	100.0%	25,375	100.0%

FACT SHEET

September 1994

STATE LEGISLATIVE

Zero-Tolerance Laws To Reduce Alcohol-Impaired Driving By Youth

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages States to enact zero tolerance laws designed to reduce drinking and driving among younger drivers. Such laws should:

- Establish that any measurable amount (.02 maximum) of alcohol in the blood, breath, or urine of a driver under age 21 would be an "illegal per se" offense; and,
- Provide for immediate driver license suspension periods for those under age 21 who exceed the applicable blood alcohol concentration (BAC) limit.

All 50 States and the District of Columbia now have laws that prohibit the purchase and public possession of alcoholic beverages by those under the age of 21. Therefore, it would seem reasonable to expect drivers under the age of 21 to have no alcohol in their systems, and the appropriate BAC for these drivers would be zero. However, NHTSA recognizes that, given the present level of technology of alcohol breath testing devices, it is difficult for law enforcement officers to detect extremely low amounts of alcohol in the body. It is for this reason that the agency generally supports States that have laws establishing a BAC level of 0.02, at which it is illegal for those under the age of 21 to operate a motor vehicle.

Younger drivers place a high value on their drivers' licenses, and the threat of license revocation has proved to be an especially effective sanction for this age group.

Key Facts

- More than 40 percent of all deaths of 15 to 20 year olds result from motor vehicle crashes. In 1993, 40 percent of the 5,905 traffic fatalities of 15 to 20 year olds were alcohol-related. The percentage translated to 2,364 traffic fatalities in this age group that were alcohol-related last year.
- In 1993, 24 percent of 15 to 20 year old drivers involved in fatal crashes had some alcohol in their blood. The alcohol involvement rate for young drivers, based on the total licensed driver population, is about twice that of the over 21 age driver.
- NHTSA estimates that 816 lives were saved in 1993 by minimum drinking age laws. Since 1975, it is estimated that almost 13,968 lives have been saved in the affected ages by these laws. However, young people under age 21 are still greatly over-represented in alcohol-related crashes and fatalities.
- Driver license revocation or suspension has proven to be an effective deterrent in reducing crashes and the reoccurrence of alcohol-related driver offenses in the general population. Some State licensing officials believe sanctions have an even greater effect on younger drivers, since they value their drivers' licenses so highly.

U.S. Department of Transportation

National Highway Traffic Safety Administration

States with Special Laws for Youth

Twenty-nine States and the District of Columbia have lower BAC limits for underage drivers: Arizona, Arkansas, California, Georgia, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. These BAC limits vary from 0.00 to 0.07 percent. Arizona, Arkansas, California, the District of Columbia, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, Ohio, Oregon, Tennessee, Utah, Virginia, Washington, and West Virginia provide zero tolerance for everyone below 21. To correspond to age 21 alcohol purchase laws, NHTSA supports the use of age 21 as an appropriate threshold for lower BAC limits and longer suspension periods.

How The Laws Work

Typically, zero tolerance laws provide that any amount of alcohol in the body of a driver under age 21 (generally measured as 0.02 percent BAC or greater) is an offense for which the driver's license may be suspended for a period varying from 10 days to three months. These laws should allow a police officer to require a breath test from any driver under the age of 21, if the officer has probable cause to believe that the individual has been drinking (and should not require that the officer have probable cause to suspect actual impairment). Refusal to take such a test should result in license suspension under implied consent or administrative license revocation (ALR) laws. In the 37 States and the District of Columbia with ALR laws, providing a sample that is positive for alcohol should result in license suspension under that law. Currently, States vary in whether the special BAC level for underage drivers is included in their ALR laws.

Other States, such as Delaware, have taken the approach of extending the period of license suspension and increasing other penalties for underage youth without changing the BAC definition of an offense. Many States have extended the period of license suspension and also changed the BAC definition.

Cost Benefit Estimates

A NHTSA evaluation of the 0.02 law in Maryland showed an 11 percent decrease in the number of drivers under age 21 involved in crashes who, police report, "had been drinking." A study of four other States (Maine, New Mexico, North Carolina, and Wisconsin) revealed a 34 percent decline in adolescent night fatal crashes during

States with Lower BAC Levels for Youthful DWI Offenders
September 1994

Cost Benefit Estimates *(continued)*

the post-law years compared to only a 7 percent decrease in adult night fatal crashes. A more recent study of 12 States with lower limits showed a 16 percent decrease in single vehicle nighttime fatal crashes for drivers targeted by the laws while these crashes rose one percent among drivers of the same ages in comparison States where the laws were not changed.

Making any amount of alcohol in the body of an underage person an offense can make the enforcement effort easier. If the officer has any reason to suspect that the individual has been drinking, he or she can demand a breath test and take action to arrest the underage driver. Passive sensors, which can detect low BACs, permit the police to identify individuals with small amounts of alcohol in their bodies. This has the potential to reduce enforcement and adjudication time and expense, particularly if handled in an administrative process.

Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991

ISTEA provides incentive grants to States that achieve at least five of the following six criteria:

- ☐ An expedited administrative procedure for suspending the license of drunk drivers;
- ☐ A law setting a 0.10 blood alcohol concentration as evidence of driving while intoxicated (after three years, it must drop to 0.08);
- ☐ A statewide sobriety checkpoint program;
- ☐ A self-sustaining drunk driving prevention program;
- ☐ A program to prevent drivers under age 21 from obtaining alcoholic beverages; and
- ☐ A mandatory sentence of 48 consecutive hours in jail or not less than 10 days of community service for any person convicted of DWI more than once in any five year period.

States can also earn supplemental grants, one of which is based on **adopting a 0.02 blood alcohol concentration limit for drivers under age 21.**

Additional Sources of Information

A number of reports have supported legislation of this type:

Lower BAC Limits For Youth: Evaluation of the Maryland .02 Law. NHTSA Report Number DOTHS 807 860, March 1992. (Technical Summary. DOT HS 807 859, March 1992.)

"Reduced BAC Limits for Young People (Impact on Night Fatal Crashes)", Alcohol, Drugs, and Driving. R. Hingson, et al., Vol. 7 No. 2, pp 117-127.

"Lower Legal Blood Alcohol Limits for Young Drivers" R. Hingson, et al, 73rd Meeting, Transportation Research Board, January 1994.

These reports and additional information are available through your State Office of Highway Safety, the NHTSA Regional Office serving your State, or from NHTSA Headquarters, Traffic Safety Programs, NTS-21, 400 Seventh St., S.W., Washington, D.C. 20590, (202) 366-9588.