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**NIJ**



**Sarah V. Hart**

*Director*

National Institute of Justice

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## National Commission on the Future of DNA Evidence

In 1995, the National Institute of Justice (NIJ) began research that would attempt to identify how often DNA had exonerated wrongfully convicted defendants. After extensive study, NIJ published the report *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, which presents case studies of 28 inmates for whom DNA analysis was exculpatory.

On learning of the breadth and scope of the issues related to forensic DNA, the Attorney General asked NIJ to establish the National Commission on the Future of DNA Evidence as a means to examine the most effective use of DNA in the criminal justice system. The Commission was appointed by the NIJ Director and represented the broad spectrum of the criminal justice system. Chaired by the Honorable Shirley S. Abrahamson, Chief Justice of the Wisconsin Supreme Court, the Commission consisted of representatives from the prosecution, the defense bar, law enforcement, the scientific community, the medical examiner community, academia, and victims' rights organizations.

The Commission's charge was to submit recommendations to the Attorney General that will help ensure the best use of DNA as a crimefighting tool and foster its use throughout the entire criminal justice system. Other focal areas for the Commission's consideration included crime scene investigation and evidence

collection, laboratory funding, legal issues, and research and development. The Commission's working groups, consisting of commissioners and other experts, researched and examined various topics and reported back to the Commission. The working groups' reports were submitted to the full Commission for approval, amendment, or further discussion and provided the Commission with background for its recommendations to the Attorney General.

By nature of its representative composition and its use of numerous working groups, the Commission received valuable input from all areas of the criminal justice system. The broad scope of that input enabled the Commission to develop recommendations that both maximize the investigative value of the technology and address the issues raised by its application.

### Commission members

#### Chair

The Honorable Shirley S. Abrahamson  
Chief Justice  
Wisconsin Supreme Court

#### Members

Dwight E. Adams  
Director  
Federal Bureau of Investigation Laboratory

Jan S. Bashinski  
 Chief  
 Bureau of Forensic Services  
 California Department of Justice  
 Sacramento, California

George W. Clarke  
 Deputy District Attorney  
 San Diego, California

James F. Crow  
 Professor  
 Department of Genetics  
 University of Wisconsin

Lloyd N. Cutler  
 Wilmer, Cutler & Pickering  
 Washington, D.C.

Joseph H. Davis  
 Former Director  
 Miami-Dade Medical Examiner  
 Department

Paul B. Ferrara  
 Director  
 Division of Forensic Sciences  
 Commonwealth of Virginia

Norman Gahn  
 Assistant District Attorney  
 Milwaukee County, Wisconsin

Terrance W. Gainer  
 Executive Assistant Chief  
 Metropolitan Police Department  
 Washington, D.C.

Terry G. Hillard  
 Superintendent of Police  
 Chicago Police Department  
 Chicago, Illinois

Aaron D. Kennard  
 Sheriff  
 Salt Lake County, Utah

Philip Reilly  
 Interleukin Genetics  
 Waltham, Massachusetts

Ronald S. Reinstein  
 Associate Presiding Judge  
 Superior Court of Arizona  
 Maricopa County, Arizona

Darrell L. Sanders  
 Chief  
 Frankfort Police Department  
 Frankfort, Illinois

Barry C. Scheck  
 Professor  
 Cardozo Law School  
 New York, New York

Michael Smith  
 Professor  
 University of Wisconsin Law School

Jeffrey E. Thoma  
 Public Defender  
 Mendocino County, California

Kathryn M. Turman  
 Director  
 Office for Victim Assistance  
 Federal Bureau of Investigation

William Webster  
 Milbank, Tweed, Hadley & McCloy  
 Washington, D.C.

James R. Wooley  
 Baker & Hostetler  
 Cleveland, Ohio

**Commission staff**

Christopher H. Asplen  
 Executive Director

Lisa Forman  
 Deputy Director

Robin W. Jones  
 Executive Assistant

## Crime Scene Investigation Working Group

The Crime Scene Investigation Working Group is a multidisciplinary group of criminal justice professionals from across the United States who represent both urban and rural jurisdictions. Working group members and contributors were recommended and selected for their experience in the area of criminal investigation and evidence collection from the standpoints of law enforcement, prosecution, defense, the forensic laboratory, and victim assistance.

DNA has proven to be a powerful tool in the fight against crime. DNA evidence can identify suspects, convict the guilty, and exonerate the innocent. Throughout the Nation, criminal justice professionals are discovering that advancements in DNA technology are breathing new life into old, cold, or unsolved criminal cases. Evidence that was previously unsuitable for DNA testing because a biological sample was too small or degraded may now yield a DNA profile. Development of the Combined DNA Index System (CODIS) at the State and national levels enables law enforcement to aid investigations by effectively and efficiently identifying suspects and linking serial crimes to each other. The National Commission on the Future of DNA Evidence made clear, however, that we must dedicate more resources to empower law enforcement to use this technology quickly and effectively.

*Using DNA to Solve Cold Cases* is intended for use by law enforcement and other criminal justice professionals who have the responsibility for reviewing and investigating unsolved cases. This report will provide basic information to assist agencies in the complex process of case

review with a specific emphasis on using DNA evidence to solve previously unsolvable crimes. Although DNA is not the only forensic tool that can be valuable to unsolved case investigations, advancements in DNA technology and the success of DNA database systems have inspired law enforcement agencies throughout the country to reevaluate cold cases for DNA evidence. As law enforcement professionals progress through investigations, however, they should keep in mind the array of other technology advancements, such as improved ballistics and fingerprint databases, which may substantially advance a case beyond its original level.

### Chair

Terrance W. Gainer  
Executive Assistant Chief  
Metropolitan Police Department  
Washington, D.C.

### Members

Susan Ballou  
Office of Law Enforcement Standards  
National Institute of Standards and  
Technology  
Gaithersburg, Maryland

Jan S. Bashinski  
Chief  
Bureau of Forensic Services  
California Department of Justice  
Sacramento, California

Sue Brown  
INOVA Fairfax Hospital  
SANE Program  
Falls Church, Virginia

Lee Colwell  
Director  
Criminal Justice Institute  
University of Arkansas System  
Little Rock, Arkansas

Thomas J. Cronin  
Chief  
City of Coeur d'Alene Police Department  
Coeur d'Alene, Idaho

Terry G. Hillard  
Superintendent of Police  
Chicago Police Department  
Chicago, Illinois

Mark Johnsey  
Master Sergeant (Ret.)  
Division of Forensic Services  
Illinois State Police Department  
Springfield, Illinois

Christopher Plourd  
Attorney at Law  
San Diego, California

Darrell L. Sanders  
Chief  
Frankfort Police Department  
Frankfort, Illinois

Clay Strange  
Assistant District Attorney  
Travis County District Attorney's Office  
Austin, Texas

### **Contributors**

Cheryl May  
Assistant Director  
Forensic Sciences Education Center  
Little Rock, Arkansas

William McIntyre  
Detective Sergeant (Ret.)  
Atlantic County Prosecutor's Office  
Homicide Unit  
Hammonton, New Jersey

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## Introduction



In 1990, a series of brutal attacks on elderly victims occurred in Goldsboro, North Carolina, by an unknown individual dubbed the "Night Stalker." During one such attack in March, an elderly woman was brutally raped and almost murdered. Her daughter's early arrival home was the only thing that saved the woman's life. The suspect fled, leaving behind materials intended to burn the residence and the victim in an attempt to conceal the crime. In July 1990, another elderly woman was brutally raped and murdered in her home. Three months later, a third elderly woman was raped and stabbed to death. Her husband was also murdered. Their house was burned in an attempt to cover up the crime, but fire/rescue personnel pulled the bodies from the house before it was engulfed in flames.

When DNA analysis was conducted on biological evidence collected from vaginal swabs from each victim, authorities concluded that the same perpetrator had committed all three crimes. However, there was no suspect.

For 10 years, both the Goldsboro Police Department and the crime laboratory refused to forget about these cases. With funding from the National Institute of Justice, the crime laboratory retested the biological evidence in all three cases with newer DNA technology and entered the DNA profiles into North Carolina's DNA database. This would allow the DNA profile developed from the crime scene evidence to be compared to thousands of convicted offender profiles already in the database.

In April 2001, a "cold hit" was made to the perpetrator's convicted offender DNA profile in the database. The perpetrator

had been convicted of shooting into an occupied dwelling, an offense that requires inclusion in the North Carolina DNA database. The suspect was brought into custody for questioning and was served with a search warrant to obtain a sample of his blood. That sample was analyzed and compared to the crime scene evidence, thereby confirming the DNA database match. When confronted with the DNA evidence, the suspect confessed to all three crimes.

Mark Nelson, special agent in charge of the North Carolina State Crime Laboratory, said, "Even though these terrible crimes occurred more than 10 years ago, we never gave up hope of solving them one day."

Every law enforcement department throughout the country has unsolved cases that could be solved through recent advancements in DNA technology. Today, investigators who understand which evidence may yield a DNA profile can identify a suspect in ways previously seen only on television. Evidence invisible to the naked eye can be the key to solving a residential burglary, sexual assault, or murder. The saliva on the stamp of a stalker's threatening letter, the perspiration on a rapist's mask, or the skin cells shed on the ligature of a strangled child may hold the key to solving a crime.

In Austin, Texas, for example, an investigator knowledgeable about DNA technology was able to solve the rape of a local college student. Having read about the potential for obtaining DNA evidence from the ligature used to strangle a victim, the investigator requested DNA testing on the phone cord used to choke the victim in his case. He realized that in the course of

*The successful review and investigation of unsolved cases require cooperation among law enforcement, the crime laboratory, and the prosecutor's office.*

choking someone, enough force and friction is applied to the rope or cord that the perpetrator's skin cells may rub off his hands and be left on the ligature.

The investigator's request paid off in an unanticipated way. In spite of the attacker's attempt to avoid identification through DNA evidence by wearing both a condom and rubber gloves, a reliable DNA profile was developed from the evidence. During the struggle, the attacker was forced to use one hand to hold the victim down, leaving only one hand to pull the phone cord tight. The attacker had to grab the remaining end of the cord with his mouth, thereby depositing his saliva on the cord. Although the developed profile came from saliva rather than skin, DNA not only solved the case in Austin, but also linked the perpetrator to a similar sexual assault in Waco.

Without the investigator's understanding of DNA technology and where DNA might be found, the case may have gone unsolved. The successful review and investigation of unsolved cases require the same basic elements as the investigation of new cases: cooperation among law enforcement, the crime laboratory, and the prosecutor's office. Investigators should be aware of technological advances in DNA testing that may yield profiles where previous testing was not performed or was unsuccessful. The crime laboratory can be essential to the preliminary review of unsolved cases, for example, by providing investigators with laboratory reports from previous testing and consultation regarding the investigative value of new DNA analysis techniques and DNA database search capabilities. Additionally, the prosecutor's office should be involved as soon as a case is reopened so that legal issues are addressed appropriately. It is also extremely important that case reconstruction considers the victim or victim's family and the importance of finality to closing a case.

Although DNA is not the only forensic tool available for the investigation of unsolved cases, advancements in DNA testing and the success of DNA database systems have inspired law enforcement agencies throughout the country to reevaluate cases previously thought unsolvable. The purpose of this report is to provide law enforcement with a practical resource for the review of old, cold, or unsolved cases that may be solved through DNA technology and DNA databases. "The Long and Short of DNA" and "How Can DNA Databases Aid Investigations?" will educate the reader about the science and technology of DNA testing and DNA databases. "Practical Considerations" provides important background information on legal and practical considerations regarding the application of DNA technology to old, cold, or unsolved cases. Finally, a step-by-step process is provided to help investigators select cases that would most likely be solved with DNA evidence. As investigators advance through this process, they should also keep in mind the array of other technology advancements, such as improved ballistics and fingerprint databases, that may benefit their investigation.

## **Advancements in DNA technology**

Advancements in DNA analysis, together with computer technology and the Combined DNA Index System (CODIS),<sup>1</sup> have created a powerful crimefighting tool for law enforcement. CODIS is a computer network that connects forensic DNA laboratories at the local, State, and national levels. DNA database systems that use CODIS contain two main criminal indexes and a missing persons index. When a DNA profile is developed from crime scene evidence and entered into the forensic (crime scene) index of CODIS, the database software searches thousands of convicted offender DNA profiles

(contained in the offender index) of individuals convicted of offenses such as rape and murder. Similar to the Automated Fingerprint Identification System (AFIS), CODIS can aid investigations by efficiently comparing a DNA profile generated from biological evidence left at a crime scene against convicted offender DNA profiles and forensic evidence from other cases contained in CODIS. CODIS can also aid investigations by searching the missing persons index, which contains DNA profiles of unidentified remains and DNA profiles of relatives of those who are missing. Because of the recidivistic nature of violent offenders, the power of a DNA database system is evident not only in the success of solving crimes previously thought unsolvable, but perhaps more importantly, through the *prevention* of crime.

When properly documented, collected, and stored, biological evidence can be analyzed to produce a reliable DNA profile years, even decades, after it is collected. Just as evidence collected from a crime that occurred yesterday can be analyzed for DNA, today evidence from an old rape kit, bloody shirt, or stained bedclothes may contain a valuable DNA profile. These new analysis techniques, in combination with an evolving database system, make a powerful argument for the reevaluation of unsolved crimes for potential DNA evidence.

Knowledgeable law enforcement officers are taking advantage of powerful DNA analysis techniques by investigating crime scenes with a keener eye toward biological evidence. The same new approach being applied to crime scene processing and current case investigation can be applied to older unsolved cases. Law enforcement agencies across the country are establishing cold-case squads to systematically review old cases for DNA and other new leads. This report will serve as a resource to assist law enforcement with maximizing the potential of DNA evidence

in unsolved cases by covering the basics of DNA analysis and its application to forensic casework. The report will also demonstrate how DNA database systems, advancing technology, and cooperative efforts can enhance unsolved case investigative techniques.

### New laws

Advancements in DNA technology have led to significant changes in many States' statutes, which may affect the manner in which unsolved cases are investigated, filed, and prosecuted. Advancements in the technology have been so significant that laws are being created, amended, and even repealed to take advantage of its ability to identify and convict the guilty and exonerate the innocent. Laws regarding DNA admissibility in court, its use in post-conviction appeals, the creation and expansion of databases, and the extension or elimination of statutes of limitation are examples of the quickly evolving impact of DNA on the criminal justice system. Given the legal changes occurring throughout the country, constant contact and consultation with the local prosecutor is critical not only for the investigation of older cases but for all cases in which DNA may be relevant evidence.

### Statutes of limitation

Statutes of limitation may be one of the most difficult issues to overcome when examining older cases. Statutes of limitation establish time limits under which criminal charges can be filed for a particular offense. These statutes are rooted in the protection of individuals from the use of evidence that becomes less reliable over time. For example, witnesses' memories fade as time goes by. However, although some evidence, such as eyewitness accounts, can lose credibility over time, DNA evidence has the power to determine truth 10, 15, even 20 years

*The power of a DNA database system is evident not only in the success of solving crimes previously thought unsolvable, but through the prevention of crime.*

*The reliability of DNA technology may necessitate the reevaluation of statutes of limitation.*

after an offense is committed. States are beginning to realize that the reliability of DNA technology may necessitate the reevaluation of statutes of limitation in the filing of cases.

### **Database expansion**

The use of DNA evidence and convicted offender DNA databases has expanded significantly since the first U.S. DNA database was created in 1989. Although State and local DNA databases established in the early 1990s contained only DNA profiles from convicted murderers and sex offenders, the undeniable success of DNA databases has resulted in a national trend toward database expansion. All States require at least some convicted offenders to provide a DNA sample to be collected for DNA profiling and, in 2000, the Federal Government began requiring certain offenders convicted of Federal or military crimes to also provide a DNA sample for the criminal DNA database. Recognizing that the effectiveness of the DNA database relies on the volume of data contained in both the forensic index (crime scene samples) and the convicted offender index of CODIS, many States are changing their database statutes to include less violent criminals. Many States are enacting legislation to require

all convicted felons to submit a DNA profile to the State database. The tendency for States to include all convicted felons in their databases dramatically increases the number of convicted offender DNA profiles against which forensic DNA evidence can be compared, thus making the database system a more powerful tool for law enforcement.

### **New legal approaches**

DNA technology and DNA databases have encouraged the development of new approaches to old cases. One such approach is the filing of charges by "John Doe" warrant. These warrants are based on the unique DNA profile obtained from the analysis of unsolved crime scene evidence. Although John Doe warrants are traditionally filed based on the physical description or alias of an unnamed suspect, investigators and prosecutors are now filing charges using the suspect's DNA profile as the identifier. This innovative approach has allowed charges to be filed that toll and permit old cases to be prosecuted when the person matching the John Doe DNA profile is identified. John Doe DNA warrants are one way to permit cases to remain active, allowing them the chance to be solved through the DNA database in the future.

## The Long and Short of DNA



DNA is the fundamental building block for an individual's entire genetic makeup. It is a component of virtually every cell in the human body, and a person's DNA is the same in every cell. That is, the DNA in a person's blood is the same as the DNA in his skin cells, saliva, and other biological material.

DNA analysis is a powerful tool because each person's DNA is unique (with the exception of identical twins). Therefore, DNA evidence collected from a crime scene can implicate or eliminate a suspect, similar to the use of fingerprints. It also can analyze unidentified remains through comparisons with DNA from relatives. Additionally, when evidence from one crime scene is compared with evidence from another using CODIS, those crime scenes can be linked to the same perpetrator locally, statewide, and nationally.

DNA is also a powerful tool because when biological evidence from crime scenes is collected and stored properly, forensically valuable DNA can be found on evidence that may be decades old. Therefore, old cases that were previously thought unsolvable may contain valuable DNA evidence capable of identifying the perpetrator.

### Similar to fingerprints

DNA is often compared with fingerprints in the way matches are determined. When using either DNA or fingerprints to identify a suspect, the evidence collected from the crime scene is compared with a "known" standard. If identifying features are the same, the DNA or fingerprint can be determined to be a match. However, if identifying features of the DNA profile or fingerprint are different from the known

standard, it can be determined that it did not come from that known individual.

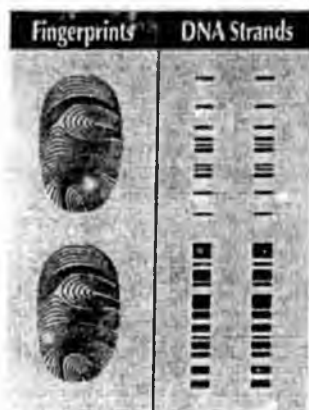
### DNA technology advancements

Recent advancements in DNA technology have improved law enforcement's ability to use DNA to solve old cases. Original forensic applications of DNA analysis were developed using a technology called restriction fragment length polymorphism (RFLP). Although very old cases (more than 10 years) may not have had RFLP analysis done, this kind of DNA testing may have been attempted on more recent unsolved cases. However, because RFLP analysis required a relatively large quantity of DNA, testing may not have been successful. Similarly, biological evidence deemed insufficient in size for testing may not have been previously submitted for testing. Also, if a biological sample was degraded by environmental factors such as dirt or mold, RFLP analysis may have been unsuccessful at yielding a result. Newer technologies could now be successful in obtaining results.

Newer DNA analysis techniques enable laboratories to develop profiles from biological evidence invisible to the naked eye, such as skin cells left on ligatures or weapons. Unsolved cases should be evaluated by investigating both traditional and nontraditional sources of DNA. Valuable DNA evidence might be available that previously went undetected in the original investigation.

If biological evidence is available for testing or retesting in unsolved case investigations, it is important that law enforcement and the crime laboratory work together to review evidence. Logistical issues

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*If the convicted offender or forensic index of CODIS is to be used in the investigative stages of an unsolved case, DNA profiles must be generated using STR analysis.*

regarding access to and the cost of DNA analysis will be a factor, as well as issues that relate to the discriminating power of each technology and that might affect the outcome of the results. Laboratory personnel can also provide a valuable perspective on which evidence might yield valuable and probative DNA results. Finally, if previously tested biological evidence produced a DNA profile but excluded the original suspect, revisiting those "exclusion" cases in the context of comparing them with DNA databases might prove to be very valuable to solving old cases.

### PCR analysis

PCR (polymerase chain reaction) enhances DNA analysis and has enabled laboratories to develop DNA profiles from extremely small samples of biological evidence. The PCR technique replicates exact copies of DNA contained in a biological evidence sample without affecting the original, much like a copy machine. RFLP analysis requires a biological sample about the size of a quarter, but PCR can be used to reproduce millions of copies of the DNA contained in a few skin cells. Since PCR analysis requires only a minute quantity of DNA, it can enable the laboratory to analyze highly degraded evidence for DNA. On the other hand, because the sensitive PCR technique replicates any and all of the DNA contained in an evidence sample, greater attention to contamination issues is necessary when identifying, collecting, and preserving DNA evidence. These factors may be particularly important in the evaluation of unsolved cases in which evidence might have been improperly collected or stored.

### STR analysis

Short tandem repeat (STR) technology is a forensic analysis that evaluates specific regions (loci) that are found on nuclear DNA. The variable (polymorphic) nature of

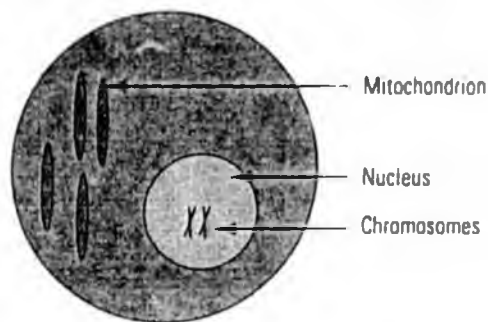
the STR regions that are analyzed for forensic testing intensifies the discrimination between one DNA profile and another. For example, the likelihood that any two individuals (except identical twins) will have the same 13-loci DNA profile can be as high as 1 in 1 billion or greater. The Federal Bureau of Investigation (FBI) has chosen 13 specific STR loci to serve as the standard for CODIS. The purpose of establishing a core set of STR loci is to ensure that all forensic laboratories can establish uniform DNA databases and, more importantly, share valuable forensic information. If the forensic or convicted offender CODIS index is to be used in the investigative stages of unsolved cases, DNA profiles must be generated by using STR technology and the specific 13 core STR loci selected by the FBI.

### Mitochondrial DNA analysis

Mitochondrial DNA (mtDNA) analysis allows forensic laboratories to develop DNA profiles from evidence that may not be suitable for RFLP or STR analysis. While RFLP and PCR techniques analyze DNA extracted from the nucleus of a cell, mtDNA technology analyzes DNA found in a different part of the cell, the mitochondrion (see exhibit 1). Old remains and evidence lacking nucleated cells—such as hair shafts, bones, and teeth—that are unamenable to STR and RFLP testing may yield results if mtDNA analysis is performed. For this reason, mtDNA testing can be very valuable to the investigation of an unsolved case. For example, a cold case log may show that biological evidence in the form of blood, semen, and hair was collected in a particular case, but that all were improperly stored for a long period of time. Although PCR analysis sometimes enables the crime laboratory to generate a DNA profile from very degraded evidence, it is possible that the blood and semen would be so highly degraded that nuclear DNA analysis would not yield a DNA profile. However, the hair

shaft could be subjected to mtDNA analysis and thus be the key to solving the case. Finally, it is important to note that all maternal relatives (for example, a person's mother or maternal grandmother) have identical mtDNA. This enables unidentified remains to be analyzed and compared to the mtDNA profile of any maternal relative for the purpose of aiding missing persons or unidentified remains investigations. Although mtDNA analysis can be very valuable to the investigation of criminal cases, laboratory personnel should always be involved in the process.

Exhibit 1. Cell diagram



### Y-chromosome analysis

Several genetic markers have been identified on the Y chromosome that can be used in forensic applications. Y-chromosome markers target only the male fraction of a biological sample. Therefore, this technique can be very valuable if the laboratory detects complex mixtures (multiple male contributors) within a biological evidence sample. Because the Y chromosome is transmitted directly from a father to all of his sons, it can also be used to trace family relationships among males. Advancements in Y-chromosome testing may eventually eliminate the need for laboratories to extract and separate semen and vaginal cells (for example, from a vaginal swab of a rape kit) prior to analysis.

Cooperative efforts with the crime laboratory are essential to deciding which analysis methods will be most valuable in a particular case. It is important to note, however, that while RFLP and mtDNA testing may be valuable to the investigation of an old case, current DNA databases are being populated with DNA profiles that are generated using STR analysis. RFLP and mtDNA profiles are not compatible with the convicted offender or forensic indexes of CODIS.<sup>2</sup>

## How Can DNA Databases Aid Investigations?

The development and expansion of databases that contain DNA profiles at the local, State, and national levels have greatly enhanced law enforcement's ability to solve cold cases with DNA. Convicted offender databases store hundreds of thousands of potential suspect DNA profiles, against which DNA profiles developed from crime scene evidence can be compared.

### SUCCESS STORY

*A "forensic hit" occurred in the National DNA Index System (NDIS) that linked a dead Florida man's DNA profile to eight serial unsolved rapes in Washington, D.C. and three offenses in Florida.*

In 1999, Leon Dundas was killed in a drug deal. Investigators remembered Dundas refusing to give a blood sample in connection with a rape investigation in 1998. They were able to obtain Dundas' blood sample through the medical examiner's office and forwarded it to the DNA lab at the Florida Department of Law Enforcement. Dundas' DNA profile was compared with the national forensic index and a match was made between Dundas and DNA evidence from a rape victim in Washington, D.C.

The FBI then entered DNA evidence from additional unsolved rapes committed in Washington. Dundas' DNA matched seven additional rapes in Washington and three more in Jacksonville, Florida. Police in Washington said that without DNA, they would have never identified Dundas, who had no prior recorded history of violent crime.

Given the recidivistic nature of many crimes, such as sexual assault and burglary, a likelihood exists that the individual who committed the crime being investigated was convicted of a similar crime and already has his or her DNA profile in a DNA database that can be searched by CODIS. Moreover, CODIS also permits the cross-comparison of DNA profiles developed from biological evidence found at crime scenes. Even if a perpetrator is not identified through the database, crimes

may be linked to each other, thereby aiding an investigation, which may eventually lead to the identification of a suspect.

### What is CODIS?

CODIS is a computer software program that operates local, State, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. Every State in the Nation has a statutory provision for the establishment of a DNA database that allows for the collection of DNA profiles from offenders convicted of particular crimes. CODIS software enables State, local, and national law enforcement crime laboratories to compare DNA profiles electronically, thereby linking serial crimes to each other and identifying suspects by matching DNA profiles from crime scenes with profiles from convicted offenders. The success of CODIS is demonstrated by the thousands of matches that have linked serial cases to each other and cases that have been solved by matching crime scene evidence to known convicted offenders.

The missing persons index consists of the unidentified persons index and the reference index. The unidentified persons index contains DNA profiles from recovered remains, such as bone, teeth, or hair. The reference index contains DNA profiles from related individuals of missing persons so that they can be periodically compared to the unidentified persons index. All samples for this index are typed using mtDNA and STR DNA analysis (if possible) to maximize the power of advancing technology.

*The offender index contains DNA profiles of individuals convicted of certain crimes. The forensic index contains DNA profiles obtained from crime scene evidence.*

**How does CODIS work?**

CODIS uses two indexes to generate investigative leads in crimes for which biological evidence is recovered from a crime scene. The convicted offender index contains DNA profiles of individuals convicted of certain crimes ranging from certain misdemeanors to sexual assault and murder. Each State has different "qualifying offenses" for which persons convicted of them must submit a biological sample for inclusion in the DNA database. The forensic index contains DNA profiles obtained from crime scene evidence, such as semen, saliva, or blood. CODIS uses computer software to automatically search across these indexes for a potential match.

A match made between profiles in the forensic index can link crime scenes to each other, possibly identifying serial offenders. Based on these "forensic hits," police in multiple jurisdictions or States can coordinate their respective investigations and share leads they have developed independent of each other. Matches made between the forensic and convicted offender indexes can provide investigators with the identity of a suspect(s). It is important to note that if an "offender hit" is obtained, that information typically is used as probable cause to obtain a new DNA sample from that suspect so the match can be confirmed by the crime laboratory before an arrest is made.

**LDIS, SDIS, and NDIS**

CODIS is implemented as a distributed database with three hierarchical levels (or tiers)—local, State, and national. All three levels contain forensic and convicted offender indexes and a population file (used to generate statistics). The hierarchical design provides State and local laboratories with the flexibility to configure CODIS to meet their specific legislative and technical needs.

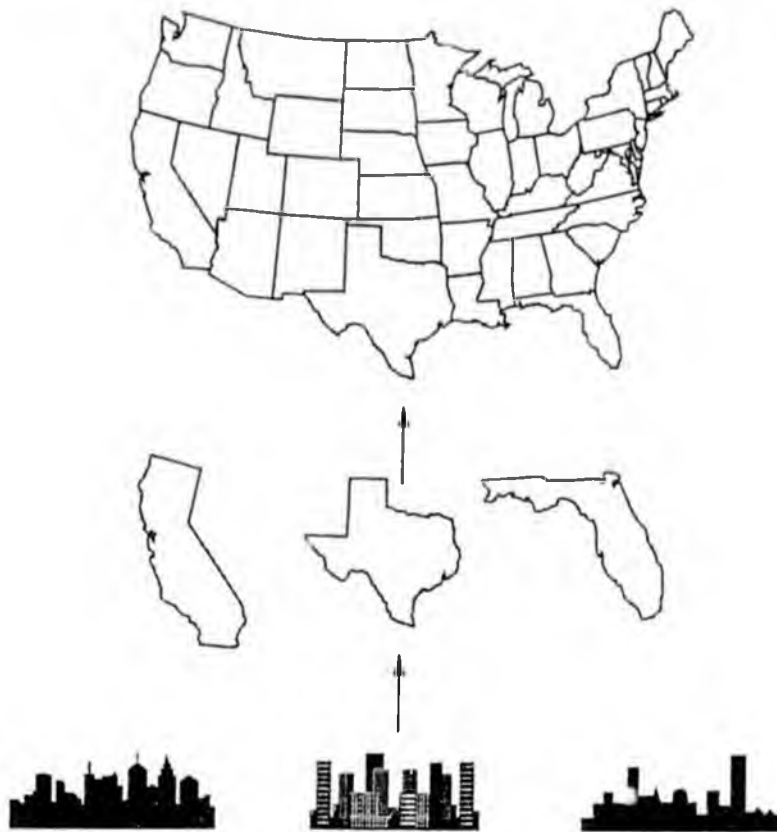
A description of the three CODIS tiers follows (see exhibit 2).

- **Local.** Typically, the Local DNA Index System (LDIS) installed at crime laboratories is operated by police departments or sheriffs' offices. DNA profiles originated at the local level can be transmitted to the State and national levels.
- **State.** Each State has a designated laboratory that operates the State DNA Index System (SDIS). SDIS allows local laboratories within that State to compare DNA profiles. SDIS also is the communication path between the local and national tiers. SDIS is typically operated by the agency responsible for implementing and monitoring compliance with the State's convicted offender statute.
- **National.** The National DNA Index System (NDIS) is the highest level of the CODIS hierarchy and enables qualified State laboratories that are actively participating in CODIS to compare DNA profiles. NDIS is maintained by the FBI under the authority of the DNA Identification Act of 1994.

**Limitations of using the DNA database**

The more data contained in the forensic and offender indexes of CODIS, the more powerful a tool it becomes for law enforcement, especially in its application to unsolved case investigation. However, because many jurisdictions are in the process of developing and populating their DNA databases, convicted offender and forensic casework backlogs have been created over time and continue to grow for several reasons. First, as States recognize the crime-solving potential of DNA databases, they continue to expand the scope of their convicted offender legislation, which increases the number of

Exhibit 2. CODIS tiers



samples to be collected and analyzed by the DNA laboratory. As a result, more than 1 million uncollected convicted offender DNA profiles are "owed" to the system.

An equally important but more difficult problem to quantify is that of unprocessed casework that contains biological evidence. This casework backlog may include nonsuspect or unsolved cases that could be analyzed and solved as a result of advancements in DNA technology.

### Convicted offender backlogs

Although all 50 States have passed DNA database legislation, many States have backlogs of convicted offender samples

that have been collected but have not yet been analyzed. Although Federal funding has played an important role in reducing existing backlogs, the crimefighting potential of DNA has prompted many States to revise their statutes to require nonviolent convicted offenders to provide a DNA sample for analysis and upload into CODIS. The trend toward expanding convicted offender DNA statutes to include nonviolent offenders has significantly increased the number of DNA samples requiring collection and analysis. Although the success of using the DNA database as a crime-solving and crime-prevention tool can easily be demonstrated once convicted offender backlogs are reduced, it should be recognized that new backlogs

are instantly created by the passage of expanded DNA legislation laws. Convicted offender backlogs are an ongoing logistical issue that can compound the complexity of investigating cold cases by using the DNA database.

### **Forensic casework backlogs**

Addressing issues that affect the efficient and effective use of DNA databases in the United States is complicated further by the existence of casework backlogs. This refers to biological evidence in perhaps tens of thousands of criminal cases, including violent and nonviolent crimes, that has not been tested or retested for DNA.

Unprocessed rape kits are a clear example of this kind of backlog. Despite the established fact that rape typically yields biological evidence, as of October 1999, at least 180,000 rape kits remained on shelves across the country, unprocessed, because no suspects have been identified. The DNA evidence from these and other criminal cases often is not analyzed and entered into the DNA database because forensic laboratories have to prioritize their work and cases scheduled for trial take precedence over cases in which no suspect is known. In most jurisdictions, non-suspect criminal cases that contain

biological evidence are not being analyzed and entered into the DNA database. In many jurisdictions, DNA from crime scenes is still primarily used to prosecute offenders, not to investigate crimes. The convicted offender backlog and limited resources for casework going to trial preclude State forensic laboratories from analyzing all biological evidence for DNA, which in turn prevents law enforcement from being able to realize the full crime-solving potential of CODIS.

The backlog of forensic cases has practical consequences for most law enforcement agencies in the United States. Laboratory capacity limitations result in the ability to process crime scene samples from only the most serious of offenses. More and more, however, agencies such as those in the United Kingdom are discovering the value of DNA technology in solving property crimes. Blood left on a broken apartment window or saliva found on a discarded beer bottle can be used to identify burglars, and the skin cells rubbed off onto the steering wheel of a stolen vehicle can solve car thefts. However, as long as forensic laboratories remain able to process only the most serious cases, the full potential of DNA technology to solve crime will remain untapped.

*Local prosecutors can provide valuable insight into legal issues. Victim/witness units or advocates can help locate, educate, and encourage witnesses. Consultation with representatives from the crime laboratory is critical.*

## Practical Considerations

A broad range of considerations must be made long before any DNA testing is actually attempted in older, unsolved cases. These include—

- Legal considerations, such as the application or expiration of statutes of limitation.
- Technological considerations, such as the nature and condition of the evidence as originally collected, stored, and in some instances subjected to other forensic tests.
- Practical considerations, such as the availability of witnesses in the event DNA testing would identify a suspect and lead to an arrest and a trial.
- Resource issues, such as the time and money available for investigation and forensic analysis.

The nature and scope of these issues require that any approach to reexamining old cases for potential DNA evidence be collaborative, whether by an individual investigator or by a specialized unit developed specifically for cold case review. Local prosecutors can provide valuable insight into legal issues that might prevent or help a future prosecution. Victim/witness units or advocates can provide valuable assistance with locating, educating, and encouraging witnesses. Consultation with representatives from the crime laboratory is critical to ensuring that potential DNA evidence can be successfully analyzed.

### Evidence considerations

When collecting unsolved case evidence from storage facilities, the case investigator should be ready to handle all types of packaging disasters. Evidence may be stored in heavy-duty plastic bags, stapled

shut as the past form of "sealing."

Multiple items may be sealed in one plastic bag, or even unpackaged in large, open, cardboard boxes. Unprotected microscope slides from medical facilities might also be found as a result of investigating old cases. No attempt should be made on the part of the investigator to separate and repackage evidence. The condition and position that the evidence has been stored in could provide valuable clues to the forensic scientist for testability of evidence. Only when evidence is found unpackaged should the investigator properly package and label the item(s) to minimize the possibility for contamination from that point forward. It is important that any evidence items are handled minimally and only by individuals wearing disposable gloves. As always, it is also very important that all actions taken as a result of opening, evaluating, packaging, or repackaging evidence are documented thoroughly in the case folder.

### Degraded evidence

Prior to the frequent use of DNA technology, biological evidence may have been collected and stored in ways that were not necessarily the best methods for preserving samples for future DNA testing. For example, evidence containing biological fluids that were originally collected for ABO Blood Typing analysis or other serology methods may have been packaged or stored in ways that can limit DNA testing. Some methods of collection and storage may promote the growth of bacteria and mold on the evidence. Bacteria can seriously damage or degrade DNA contained in biological material and inhibit the ability to develop a DNA profile; however, evidence can still sometimes yield DNA results. For example, PCR technology can allow the laboratory to develop profiles

from some moldy biological samples, whereas other evidence may fail to yield a usable DNA profile, even when no mold is visible. Therefore, close consultation with the laboratory is important to determine the type of DNA testing most likely to yield results on the available evidence.

### Contamination issues

Because of the particularly sensitive nature of DNA technology, the potential contamination of evidence should be carefully considered. Technologies used to analyze evidence prior to the forensic application of DNA were not always sensitive to contaminants. Evidence in older cases may have been collected in ways that lacked appropriate contamination or cross-contamination safeguards, which can make the DNA results less useful or even misleading. In these cases, clarifying results by identifying the contributor of an additional profile can determine whether the DNA results may now be used. When a mixture is detected, a careful reconstruction of the evidence collection, storage, and analysis process must be undertaken. It may be determined that DNA profiles will be required from on-scene officers, evidence technicians, or laboratory scientists who had access to the evidence for comparison with evidence results. In these instances, proper chain-of-custody reconstruction is critical.

### EVIDENCE HANDLING RECOMMENDATIONS

- Wear gloves. Change them between handling each item of evidence.
- Use disposable instruments or clean instruments thoroughly before and after handling each evidence sample.
- Avoid touching the area where you believe DNA may exist.
- Avoid touching your face, nose, and mouth when examining and repackaging evidence.
- Put dry evidence into new paper bags or envelopes; do not use plastic bags.
- Do not use staples.
- If repackaging of evidence is necessary, consult with laboratory personnel.

It is also important to avoid contamination when handling biological evidence during the course of the current review. If evidence that may contain biological material is already sealed, do not reopen it before sending it to the laboratory. (See Evidence Handling Recommendations.)

### Legal considerations

Numerous legal issues might arise when examining older cases for potential DNA evidence. These issues are most likely jurisdictionally specific and may differ from State to State. Although most jurisdictions maintain no statute of limitation for filing charges in a homicide case, States can vary widely in the time allowed for filing charges in other cases, such as rape and other sexual assault crimes. Furthermore, in recognition of DNA technology's ability to solve old cases, many States are extending or even eliminating statutes of limitation for certain crimes.

### Chain of custody

When a case remains unsolved for a long period of time, evidence is usually handled by an increased number of individuals. Many unsolved cases to be reviewed for DNA evidence may have been previously reinvestigated or handled by several different investigators as a result of new leads or periodic, systematic reviews. Furthermore, as cases age, the likelihood increases that evidence may be moved to new or remote storage locations as evidence from newer cases fills police department shelves.

Many cases may also have had evidence submitted to the laboratory for various forms of forensic testing. Evidence in older cases may have been submitted for standard serological testing, but can now be tested for DNA with much greater success. Hair previously submitted for standard microscopic hair analysis may now

be submitted for mtDNA testing. As with all criminal investigations, chain-of-custody issues are critical to maintaining the integrity of the evidence. In all cases, the ultimate ability to use DNA evidence will depend on the ability to prove that the chain of custody was maintained.

### Statutes of limitation

One of the first issues to address when reviewing an unsolved case is whether the statutes of limitation on a case have run out. Several considerations arise when addressing a statute of limitation issue. Good communication between law enforcement and local prosecutors is critical when examining these legal questions.

**Changes in statutes.** Advances in DNA technology and the creation of DNA databases are leading many criminal justice professionals to rethink time limits placed on the filing of criminal charges. Because biological evidence can yield reliable DNA analysis results years after the commission of a crime, many State legislatures have begun to extend, and in some cases eliminate, the statutes of limitation for some crimes and in certain circumstances. Many States have extended the length of time for which a complaint can be filed, other States have eliminated statutes of limitation for certain crimes, and some legislation is retroactive.

**Exceptions to statutes.** Exceptions often exist under existing and new statutes. Under such exceptions, time can be added to the statute of limitation, giving police the legal authority to arrest even if it appears as though the statute has run out. For example, many jurisdictions have exceptions for a suspect's flight from jurisdiction. In a case for which there is a 5-year statute of limitation, if the government can prove that the suspect has been absent from the jurisdiction for 2 years, the State can still file against the suspect

for up to 7 years after the commission of the crime. Exceptions also exist for cases in which child victims are assaulted by a family member, which can be valuable in the context of a current investigation.

### Victim and witness considerations

Another important consideration to be made early in the process is the willingness of victims and witnesses to proceed. Although many victims may continuously monitor the progress of their investigations, some choose to detach from the process over time. Reinvestigating a case may cause renewed psychological trauma to the victim and victim's family. It should not be assumed that victims and witnesses, even if they were eager to pursue the case when it occurred, are still interested in pursuing the case. A phone call from an investigator years later may not be a welcome event. Whenever possible, enlist the aid of victim service providers. If a new officer is handling the investigation, enlisting the assistance of the original investigator to make the first contact with the victim may also be helpful.

The older a case is, the more difficult it may be to locate witnesses. However, early identification of victim and witness availability may ultimately save significant resources. Consultation with prosecutors is mandatory when considering whether a witness would be necessary at trial.

*It should not be assumed that victims and witnesses are still interested in pursuing the case. Whenever possible, enlist the aid of victim service providers.*

### STATUTE OF LIMITATION RECOMMENDATIONS

- Know the original statute of limitation.
- Determine whether the law has changed regarding time limits for filing. If so, is the law retroactive?
- Determine whether there are exceptions to the statute.
- Consult with the prosecutor.

## Identifying, Analyzing, and Prioritizing Cases

*Good communication between police, laboratories, and prosecutors can help identify and convict serious offenders and save valuable time and resources.*

Whether the process of reviewing unsolved cases is initiated by a single officer or by a specialized unit, it must ultimately be a team effort. At all stages of the process, investigators should avail themselves of the scientific advice of the laboratory and the legal expertise of the local prosecutor's office. Close consultation with the laboratory can ensure that evidence integrity is maintained and that limited laboratory resources are allocated effectively. Similarly, prosecutors can help identify issues that might occur at trial if a suspect is identified and arrested upon successful DNA testing. Good communication between police, laboratories, and prosecutors can help identify and convict serious offenders and save valuable time and resources.

### Identify potential cases for review

An initial step in the DNA review of unsolved cases is to identify cases that might be amenable to DNA testing. While the cases considered for this kind of review will vary from jurisdiction to jurisdiction, it is important to define minimum requirements that will likely benefit from this approach. Issues such as statutes of limitation and solvability factors should be thoroughly examined in cooperation with a prosecutor and the forensic laboratory to establish guidelines for case selection. It also will be important to identify the ultimate goals of the program so that the selection criteria can be tailored to meet those specific goals.

Cases that could benefit from a review for potential DNA evidence can be identified from numerous sources. In some instances a single police officer or investigator may remember an unsolved case

from years ago. In some departments a formalized cold-case unit may systematically review cases for the potential of DNA testing. Other cases may be identified by coordinated, interdepartmental efforts, victims or witnesses who have heard about the potential of DNA evidence, and laboratories taking inventory of their storage facilities. If a department is pursuing a systematic review of cases, either by one or two officers or by a formal unit, there are many sources that can be consulted for valuable investigative information, such as—

- Autopsy, laboratory, prosecutor, and local agency logbooks.
- Retired investigators.
- Computer databases.

### Identify statute of limitation issues

Statute of limitation issues might affect the ultimate ability to prosecute a case. Cases should be preliminarily reviewed by investigators in conjunction with the prosecutor's office to identify which prosecutions would be barred by the statutes of limitation. If the goal of the unsolved case review program is to obtain convictions and statutes of limitation have expired on a particular case, a department may wish to save its resources for cases likely to yield convictions. However, if the goal of the program is to solve and close unsolved cases regardless of whether a conviction could be obtained, a jurisdiction may decide to review all cases that qualify under its guidelines. This is an important consideration in the context of investigating serial offenders whose criminal acts might span the course of years or decades.

### Define categories of cases— solvability factors

Because the number of cases that qualify for reinvestigation might be very large, it may be beneficial for a jurisdiction to define cases according to several solvability factors. Solvability factors include facts and circumstances of a case that influence the likelihood that it might be solved through advancements in DNA technology. For example, a high probability exists that analysis of nonsuspect rape kits will yield valuable DNA results. Profiles generated as a result of DNA analysis can now be entered into CODIS, which can solve a case by matching to a convicted offender, or aid investigations by linking serial rapes to each other. Additionally, if an unsolved murder case contains biological evidence foreign to the victim that did not produce viable results from ABO blood typing or RFLP DNA analysis, evidence could be reanalyzed with the more discriminating and powerful STR technology. It is also important to recognize and sort out cases that might not be as likely to be solved with DNA technology. An example might be an unsolved drive-by homicide because the perpetrator most likely would not have left biological evidence at this kind of crime scene.

### Case review— establish priorities

Once solvability factors and statute of limitation issues are addressed, it is important to continue the process by identifying the cases to be reviewed first. To preserve investigative resources when considering a larger number of unsolved cases for review, jurisdictions may prioritize according to the likelihood that cases will be solved or the likelihood that investigations will be aided. In establishing this priority, the following criteria can be considered:

- How many qualifying cases are there?
- Where are the case files located?
- Are case summaries available?
- How many cases will be assigned to an investigator?

To establish an investigative hierarchy, qualifying cases should be reviewed by experienced, proficient investigators. A checklist can be used throughout the review process so that managers can decide which cases will be worked first. A checklist can also provide review process consistency throughout the agency. (See Sample Checklist at the end of this report.) The following categories may serve as a model for a hierarchy in prioritizing cases:

- There is a known suspect and physical evidence appears to have been preserved in a manner consistent with successful DNA testing and use of CODIS.
- There is no known suspect but physical evidence has been preserved in a manner consistent with successful DNA testing and use of CODIS.
- There is no known suspect and evidence was collected and preserved in a manner that may make it difficult to obtain a DNA profile.

### Locating case files, obtaining evidence logs, and other documentation

Locating the case file and original evidence for the investigation may be a challenging endeavor. Changes in personnel, procedure, and facilities and the passage of time may complicate the process. When searching for a case file or evidence, an investigator may need to look in numerous

places. Potential locations include, but are not limited to, the following:

- Police department property rooms (case files, evidence logs, whole evidence).
- Property warehouses (case files, evidence logs, whole evidence).
- Public crime laboratories (previously tested/submitted evidence, lab reports).
- Private laboratories (previously tested evidence, lab reports).
- Hospital/medical facilities (rape kits, medical reports, slides).
- Coroner/medical examiners' offices (autopsy reports).
- Courthouse property rooms.
- Prosecutors' offices (previous trial or suspect investigation).
- Retired investigators' files (case notes and details not contained in file).
- Other investigating agency offices (investigative leads—serial offender).

### Forensic testing reports and previously tested evidence

Because advancements in DNA technology enable laboratories to successfully analyze old evidence that might have been improperly stored or subjected to previous forensic analysis, it will be very valuable to locate any and all forensic reports that were produced as a result of previous analysis and/or testing. ABO blood typing, microscopic hair analysis, RFLP DNA analysis, or fingerprint analysis (among others) might have been performed in the course of the original investigation. The original case file should indicate whether and which types of forensic analysis were attempted. These reports also serve to

memorialize proper chain of custody. Cooperation with the crime laboratory is crucial to locate and interpret existing forensic reports and to determine whether evidence would be amenable to reanalysis with new DNA techniques.

Many combinations of options are available to investigators and laboratory personnel if biological evidence was available and previously tested. Exhibit 3 may serve to help investigators as they work with the laboratory to discuss options throughout the course of the investigation.

### Locate biological evidence

When reviewing the case file for potential DNA evidence, it is important to know what kinds of evidence may yield a DNA profile. Given the power and sensitivity of newer DNA testing techniques, DNA can be collected from virtually anywhere. Only a few cells can be sufficient to obtain useful DNA information to help solve a case. Exhibit 4 identifies some common items of evidence that may have been collected previously but not analyzed for the presence of DNA evidence. Remember, if a stain is not visible it does not mean that there are not enough cells for DNA typing. Further, DNA does more than just identify the source of the sample; it can place a known individual at a crime scene, in a home, or in a room where the suspect claimed not to have been. It can refute a claim of self-defense and put a weapon in the suspect's

### DNA CAN DO MORE . . .

. . . than identify a suspect. It can also—

- Place a known individual at a crime scene.
- Refute a claim of self-defense.
- Put a weapon in a suspect's hand.
- Change a suspect's story from an alibi to one of consent.

hand. It can also provide irrefutable evidence that can change a suspect's story from an alibi to one of consent.

### Evaluate for probative DNA evidence

On completion of reviewing the case file, reports, and evidence in consultation with the laboratory, it will be necessary to identify which evidentiary items will be amenable to DNA analysis. Consultation with the laboratory will be essential to determine the likelihood of obtaining results from DNA analysis, and consultation with a prosecutor is very important to determine which evidence will be probative to the case. Building the new investi-

gation on cooperative efforts between the laboratory and prosecutor can save valuable resources, develop leads, and identify previously overlooked evidence that may yield a DNA profile.

### Continue investigative protocol

If DNA analysis is to be conducted, it may be important to obtain reference samples from prior suspects, and it might be necessary to be creative when obtaining these samples. While a biological sample in the form of blood or saliva can be obtained voluntarily through a consent form, a standard reference sample might already exist if previous forensic analysis,

Exhibit 3. Investigative options

Test conducted	Original results	Original interpretation	Options for investigators
RFLP/PCR	Obtained profiles	No suspects identified	Is the original extract remaining? 1. If so, retest using STR technique and submit to CODIS. 2. If not, reextract the original sample using STR technique and submit to CODIS.
RFLP	Inconclusive or no results obtained	Sample size may have been insufficient or not concentrated enough	Is the original extract remaining? 1. If so, retest using STR technique and submit to CODIS 2. If not, reextract the original sample using STR technique and submit to CODIS
PCR	Inconclusive or result intensity below "S" and "C" dots	Sample size may have been insufficient	Is the original extract remaining? 1. If so, retest using STR technique and submit to CODIS. 2. If not, reextract the original sample using STR technique and submit to CODIS
Conventional serology (ABO, secretor status, enzymes such as EsD, PGM, GLO I, EAP, ADA, AK)	Obtained a type in these systems	Poor statistics and no searching capability	If original evidence still exists, extract the sample using STR technique and submit to CODIS.
None		1. Limited sample size 2. No suspects, did not process further. 3. No request at the time of analysis	If original evidence still exists, extract the sample using STR technique and submit to CODIS.

such as serological testing, was performed during the course of the original investigation.

Additionally, elimination samples from anyone who had lawful access to the crime scene, such as family members, may be required if the laboratory determines that there is more than one DNA profile present in the evidence sample. Early identification of the location and status of persons who might be requested to submit an elimination sample could save valuable time and resources if the laboratory needs such information. Consultation with the laboratory is essential to properly coordinating this process.

### Follow agency procedures for submitting the DNA profile to CODIS

On successful laboratory analysis resulting in a DNA profile developed from crime scene evidence, existing and/or new suspect DNA profiles should be compared with the evidence profile. If the laboratory determines a match between a suspect and the evidence, the prosecutor's office should be consulted on how to proceed. However, if a match is not found, agency procedures should be followed, in accordance with the crime laboratory, to submit the crime scene evidence DNA profile into CODIS.

Exhibit 4. Common items of evidence

Evidence	Possible location of DNA on the evidence	Source of DNA
Baseball bat	Handle	Skin cells, sweat, blood, tissue
Hat, bandanna, or mask	Inside surfaces	Sweat, hair, skin cells, dandruff, saliva
Eyeglasses	Nose or ear piece, lens	Sweat, skin cells
Facial tissue, cotton swab	Surface	Mucus, blood, sweat, semen, ear wax
Dirty laundry	Surface	Blood, sweat, semen, saliva
Toothpick	Surface	Saliva
Used cigarette	Cigarette butt (filter area)	Saliva
Used stamp/envelope seal	Moistened area	Saliva
Tape or ligature	Inside or outside surface	Skin cells, sweat, saliva
Bottle, can, or glass	Mouthpiece, rim, outer surface	Saliva, sweat, skin cells
Used condom	Inside/outside surface	Semen, vaginal or rectal cells
Bed linens	Surface	Sweat, hair, semen, saliva, blood
"Through and through" bullet	Outside surface	Blood, tissue
Bite mark	Surface of skin	Saliva
Fingernail/partial fingernail	Scrapings	Blood, sweat, tissue, skin cells

Note: When reviewing evidence, it is important to maintain chain of custody, consult with laboratory personnel, and take all appropriate precautions against contamination, including wearing gloves and changing them between handling of different pieces of evidence.

Because CODIS contains hundreds of thousands of convicted offender DNA profiles, it is possible that the person who committed the unsolved crime being investigated was convicted of a qualifying offense that required submission of a DNA profile to the database. If that person has not previously been convicted of a qualifying offense, especially in light of expanding database law, it is possible that they will be convicted in the future.

Further, because the forensic index of CODIS contains thousands of crime scene evidence profiles, the investigation could be aided if a match is made to another forensic DNA profile already in the database. Finally, an investigator should not assume that a new DNA profile generated from unsolved case evidence and submitted to the laboratory for entry into CODIS will be compared with every possible convicted offender or crime scene index profile. The investigator may need to proactively request that his CODIS administrator search the new profile against the local, State, and national DNA databases.

### Prepare a John Doe warrant

CODIS is a powerful crime-solving and crime-prevention tool, but many cases will not be solved as a result of entering a DNA profile into the forensic index of the database. Additionally, many cases will

have statute of limitation issues that might prevent the prosecution of the case if a match is not determined in a timely manner. Therefore, if no offender match occurs in cases in which statutes of limitation are an issue, consideration may be given, in consultation with the prosecutor, to preparing a John Doe warrant. These types of warrants can identify the perpetrator according to his or her DNA profile. The 13-loci profile generated by the crime laboratory should be clearly printed on the face of the warrant. The John Doe warrant is not novel; however, the unconventional method of describing an individual by his or her DNA profile may allow for prosecution of a case if a DNA match is determined in the course of future investigations or as a result of the CODIS system being populated with more convicted offender and forensic DNA profiles.

### Notes

1. CODIS uses two indexes—the forensic index and the offender index—to generate investigative leads in crimes where biological evidence is recovered from crime scenes. The forensic index contains DNA profiles of biological crime scene evidence and the offender index contains DNA profiles of individuals convicted of a qualifying offense.

2. CODIS has a missing persons index that exclusively contains mtDNA profiles; the convicted offender and forensic indexes of CODIS exclusively contain STR DNA profiles.

## SAMPLE CHECKLIST

- Identify potential cases.
  - Identify any statute of limitation issues (consult with prosecutors).
  - Define case categories according to solvability factors.
- Prioritize cases (consider solvability factors).
- Locate and review the case file; obtain evidence logs and other documentation such as laboratory and autopsy reports.
- Locate previous forensic testing reports and location of previously tested evidence.  
For example—
  - Blood previously ABO typed.
  - Hair analyzed microscopically.
  - Fingerprint evidence.
- Locate crime scene evidence containing biological material.
- Evaluate the case and evidence for potential probative DNA. Be sure to—
  - Consider all evidentiary possibilities.
  - Take appropriate precautions against contamination.
- In consultation with the laboratory and prosecutors, submit appropriate (probative) evidence to the laboratory for testing.
- Continue investigative protocol. If needed, obtain reference samples from suspects—
  - Voluntarily using a consent form.
  - By using a previously obtained sample (e.g., if a reference sample was used for standard serological testing).
- Identify witness issues—
  - Legal availability.
  - Willingness to proceed.
  - Location.
- If a profile does not match suspect profiles, follow agency procedures for submitting the evidence profile to CODIS.
- If no offender match occurs in cases in which statutes of limitation are an issue, prepare a John Doe warrant.

## About the National Institute of Justice

NIJ is the research, development, and evaluation agency of the U.S. Department of Justice and is solely dedicated to researching crime control and justice issues. NIJ provides objective, independent, nonpartisan, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels. NIJ's principal authorities are derived from the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. §§ 3721-3722).

### NIJ's Mission

In partnership with others, NIJ's mission is to prevent and reduce crime, improve law enforcement and the administration of justice, and promote public safety. By applying the disciplines of the social and physical sciences, NIJ—

- Researches the nature and impact of crime and delinquency.
- Develops applied technologies, standards, and tools for criminal justice practitioners.
- Evaluates existing programs and responses to crime.
- Tests innovative concepts and program models in the field.
- Assists policymakers, program partners, and justice agencies.
- Disseminates knowledge to many audiences.

### NIJ's Strategic Direction and Program Areas

NIJ is committed to five challenges as part of its strategic plan: 1) *rethinking* justice and the processes that create just communities; 2) *understanding* the nexus between social conditions and crime; 3) *breaking* the cycle of crime by testing research-based interventions; 4) *creating* the tools and technologies that meet the needs of practitioners; and 5) *expanding* horizons through interdisciplinary and international perspectives. In addressing these strategic challenges, the Institute is involved in the following program areas: crime control and prevention, drugs and crime, justice systems and offender behavior, violence and victimization, communications and information technologies, critical incident response, investigative and forensic sciences (including DNA), less-than-lethal technologies, officer protection, education and training technologies, testing and standards, technology assistance to law enforcement and corrections agencies, field testing of promising programs, and international crime control. NIJ communicates its findings through conferences and print and electronic media.

### NIJ's Structure

The NIJ Director is appointed by the President and confirmed by the Senate. The NIJ Director establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the U.S. Department of Justice, and the needs of the field. NIJ actively solicits the views of criminal justice and other professionals and researchers to inform its search for the knowledge and tools to guide policy and practice.

NIJ has three operating units. The Office of Research and Evaluation manages social science research and evaluation and crime mapping research. The Office of Science and Technology manages technology research and development, standards development, and technology assistance to State and local law enforcement and corrections agencies. The Office of Development and Communications manages field tests of model programs, international research, and knowledge dissemination programs. NIJ is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

To find out more about the National Institute of Justice, please contact

National Criminal Justice  
Reference Service  
PO Box 6000  
Rockville, MD 20849-6000  
800-851-3420  
e-mail: [askncjrs@ncjrs.org](mailto:askncjrs@ncjrs.org)

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Washington, DC 20531

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JULY 02

## **MODEL LEGISLATION DNA COLLECTION USE OF FORCE**

### **Some Other States that have "reasonable forces" statutes:**

Pennsylvania, California, Illinois, Arkansas, South Dakota, Wyoming, Florida, Idaho, Colorado, Ohio

### **2003 Enacted "reasonable force" statutes:**

#### **Illinois SB 280 b**

Allows agencies designated by the Department of State Police to contract with third parties to provide for the collection or analysis of offender DNA. Provides that duly authorized law enforcement and corrections personnel may employ reasonable force when an individual refuses to provide required DNA samples.

Statutory language:

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=093-0216>

#### **Louisiana SB 346 b**

Expands DNA data base to include all persons arrested for or convicted of a felony, including felony-grade delinquent acts. Allows reasonable use of force as needed to collect such samples. Provides for implementation of arrestee samples only to the extent that funding is available. Allows prosecution of sex crimes within three years of statutory statute of limitations when the identity of the offender is established thereafter with a DNA profile, with retroactive application. Establishes that detention, arrest or conviction of a person based on a data base match is not invalidated if it is determined that the sample was obtained or placed in the database by mistake.

### **2002 Enacted "reasonable force" statutes:**

#### **California SB 1242**

Allows law enforcement, custodial or corrections personnel to employ reasonable force to collect required specimens, samples or print impressions from persons convicted of specified offenses.

#### **Utah HB 5015E**

Requires collection of DNA from all state felonies. Clarifies statutory authority for agencies to collect specimens; requires agencies establish guidelines and procedures; and authorizes use of reasonable force if necessary to collect the specimen; and allows the \$75 fee be waived if the collecting agency determines the offender is unable to pay.

Provided by Senator Bunde

**SB**

**101**

# SENATE COMMITTEE REPORT

DATE: 3/3/05

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 101

## SB 101 REVISOR'S BILL

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

and recommends:

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

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

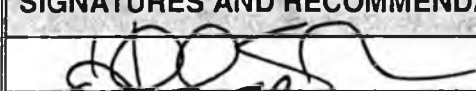
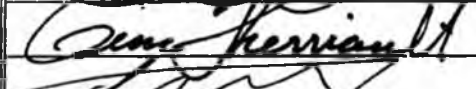
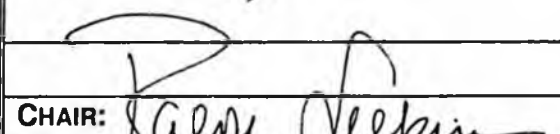
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
			X	
	X			
CHAIR: 	X			

AMENDMENT #1

OFFERED IN THE SENATE  
TO: CSSB 101(STA)

BY SENATOR THERRIAULT

- 1 Page 21, lines 1 - 31:
- 2 Delete all material.
- 3
- 4 Renumber the following bill sections accordingly.
- 5
- 6 Page 29, line 1, through page 31, line 30:
- 7 Delete all material.
- 8
- 9 Renumber the following bill sections accordingly.
- 10
- 11 Page 46, line 19:
- 12 Delete "AS 44.66.020, 44.66.030;"

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 3, 2005

**SUBJECT:** 2005 Revisor's Bill (Work Order No. 24-LS0195\Y)

**TO:** Senator Ralph Seekins  
Chair, Senate Judiciary Committee

**FROM:** James P. Crawford   
Assistant Revisor

The following is a sectional analysis of a draft of the 2005 revisor's bill, which has been referred to the Senate Judiciary Committee. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

**Sections that delete, repeal, or update obsolete provisions:** Sections 25, 26, 28, 29, 30, 32, 33, 34, 35, 41, 42, 43, 47, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 80, and 94 amend or repeal provisions that have become obsolete in whole or in part.

**Sections that correct errors or oversights:** Sections 2, 20, 21, 36, 38, 39, 48, and 54 correct errors or oversights.

**Sections that improve the form or substance of the law:** Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 27, 31, 37, 40, 44, 45, 46, 49, 50, 51, 52, 53, 55, 56, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93, propose amendments to improve the form or substance of the statutory law of Alaska.

## SECTIONAL ANALYSIS

**Bill section 1** improves the form of AS 04.11.210(c). The term "includes" incorporates the concept of "is not limited to" under AS 01.10.040(b) and is the preferred usage for legal drafting in this situation.

Bill section 2 corrects an error in AS 06.50.020(a)(2)(C). As originally set out in sec. 3, ch. 116, SLA 2004, the term "convictions" modified all the items in sub-subparagraphs (i)-(iii). Following the bill's enactment, the Office of Legal Services, the Department of Law, and the administration personnel who administer this area noted that, strictly speaking, the concept of convictions did not fit correctly with the items in (ii) or (iii). The term is moved to (i), where the concept of corrections is most appropriate.

Bill section 3 improves the form of AS 10.06.960(a) i.e. its reference to the Alaska Native Claims Settlement Act ("ANCSA"). At present, ANCSA proper actually consists of sections 1601 - 1629h, which comprise chapter 33 in title 43 of the U.S. Code. The last section, 1629h, was added in 2000. Like many statutes, AS 10.06.960(a)'s citation of the Act includes a spanned reference. However, every time another section is added to the Act, Alaska statutes that cite to it with a spanned reference become incorrect, necessitating their amendment.

An alternate way of referring to the Act avoids this necessity by citing to the first section, which does not change, followed by "et seq." This is the abbreviation for "*et sequentes*", which means "and the following." This citation form, when used in association with the Act, will automatically incorporate new additions to the Act as they occur and will obviate the need for amending each statute citing the Act after each addition.

Accordingly, all statutes in which the legislative intent appears to have been to refer to the Alaska Native Claims Settlement Act are amended to reflect this automatically inclusive citation form.

Bill sections 4, 5, 6, 7, 8, 9, 10, and 11 improve the form of AS 10.06.960(b), (c), (e), (f), (g), (h), (i), and (k), respectively, by capitalizing the first letter of "Act," which is the abbreviated version of the Alaska Native Claims Settlement Act. This is the preferred usage for legal drafting.

Bill section 12 improves the form of AS 10.06.960(n) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 13 improves the form of AS 10.06.960(o) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 14 improves the form of AS 10.06.960(p) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of AS 10.06.960(p) by changing the abbreviated reference to that Act to the preferred usage for legal drafting for the reason described in the explanation of bill secs. 4-11.

Bill section 15 improves the form of AS 10.06.961(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 16 improves the form of AS 10.20.007 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 17 improves the form of AS 13.12.102(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 18 improves the form of AS 13.16.705(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 19 improves the form of AS 13.16.705(g) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 20 corrects an error in AS 13.26.210, which was repealed and reenacted by sec. 21, ch. 84, SLA 2004. The court system pointed out that the language "incapacitated person" in subsection (g) was not the correct term for use with conservators, that "protected person" was the correct term, and that a substitution should be made. The court system's observation is supported by usage in AS 13.26. Specifically, AS 13.26.090 - 13.26.155, entitled "Article 3. Guardians of Incapacitated Persons," links guardians to "incapacitated persons," as the title of the article suggests. Additionally, AS 13.26.165 - 13.26.320, entitled "Article 4. Protection of the Property of Persons under Disability and Minors," links conservators with "protected persons."

Moreover, the phrasing of this section's other subsections, specifically (d) and (f), which were repealed and reenacted in the same bill as subsection (g), suggest that the "incapacitated person" language was used mistakenly and also support the change from "incapacitated person" to "protected person."

Bill section 21 corrects two oversights in AS 13.26.332, the statutory form power of attorney. As currently written, one part of the section provides that the agent that is being granted a power of attorney may exercise the powers that the principal has "checked below," and a list of specific powers follows. This is not correct. In actuality, the remainder of the section operates in such a way that to give the enumerated powers to the agent in question, the principal does nothing. The powers are conferred automatically. On the other hand, to keep a given power from the agent, the principal must line out the power and initial next to it. In any event, nothing is ever "checked." Accordingly, the first change, substituting "as indicated" for "as I have checked," reflects the way that the section actually operates.

The second change to this section removes the language "and the power to make your health care decisions" in the form's preamble, which generally describes what powers the form may grant to the agent who holds the power of attorney.

Last year, statutory provisions relating to health care decision were consolidated and moved to AS 13.52 by HB 25, enacted as Chapter 83, SLA 2004. As part of this consolidation, HB 25 repealed the specific paragraph in this form relating to the power to

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make decisions regarding "health care services" and transplanted it to the new chapter. See AS 13.52.010 and 13.52.300. However, the bill neglected to address the corresponding reference to the repealed paragraph in the introductory material. That oversight is corrected here.

Bill section 22 improves the form of AS 13.26.344(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 23 improves the form of AS 13.46.085(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 24 improves the form of AS 13.46.085(f) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 25 deletes an obsolete reference to the Bureau of Indian Affairs in AS 14.07.030(2). The Office of Legal Services confirmed with the Department of Law that the reference in paragraph (2) is outdated and should be removed because, as a general matter, the Bureau of Indian Affairs no longer operates or administers schools in Alaska.

Bill section 26 deletes an obsolete reference to the Bureau of Indian Affairs in AS 14.08.101(2) for the reasons set out in the explanation of bill sec. 25.

Bill section 27 improves the form of AS 14.57.210(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 28 deletes obsolete language relating to the Bureau of Indian Affairs in AS 14.60.010(6) for the reasons set out in bill sec. 25.

Bill section 29 updates AS 16.05.835(b)'s reference to hair crab. The Department of Law requested this change because the scientific classifying group I.T.I.S., which is the entity used by federal agencies, including the Department of Agriculture, has dropped "Korean" from the species name. This amendment makes the same change.

Bill section 30 deletes obsolete language in AS 16.10.520(e) relating to outdated date references.

Bill section 31 improves the form of AS 16.20.032(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 32 deletes obsolete language in AS 16.20.310(c) relating to the Agricultural Development Authority. This section was enacted in 1979, and the act did not create, define, or even otherwise refer to an "Agricultural Development Authority." It does not now exist or ever appear to have existed in statute. The reference to it is removed.

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Bill section 33 updates AS 16.43.450(a)'s reference to hair crab. The scientific classifying group I.T.I.S., which is the entity used by federal agencies, including the Department of Agriculture, has dropped "Korean" from the species name. This amendment makes the same change at the Department of Law's request.

Bill section 34 updates AS 16.43.450(b)'s reference to hair crab for the reason set out in the explanation of bill sec. 33.

Bill section 35 updates AS 16.43.460(b) to reflect the repeal of AS 16.43.901 in 1996 and of AS 16.43.906 in 1997.

Bill section 36 corrects an apparent oversight in AS 17.20.330. This section relates to certain entities that disseminate an advertisement of another entity's product that is false.

In particular, the section provides that the disseminating entity is not liable for the dissemination of the false advertising unless the disseminating entity refuses to provide certain identification information about the other entity to the commissioner of health and social services. At the time this section was enacted, the commissioner of health and social services was responsible for the enforcement of the prohibition on the dissemination of false advertising, set out in AS 17.20.290(a)(5).

However, responsibility for enforcing the prohibition on dissemination of false advertising was split last year between two commissioners. See secs. 2 and 3, ch. 151, SLA 2004. The commissioner of health and social services remains responsible for the enforcement of false advertising relating to "drugs or devices" under AS 17.20.290(c). However, the commissioner of commerce, community, and economic development is now responsible for the enforcement of false advertising relating to "food or cosmetics" under AS 17.20.290(b).

Because the commissioner of commerce, community, and economic development now has been given enforcement responsibility, a corresponding reference to the commissioner should have been added as a part of the 2004 amendments to this chapter. It was not. This change corrects that omission.

Bill section 37 improves the form of AS 18.56.097 in its reference to one section of the Alaska Native Claims Settlement Act, which is changed to reflect the codified section number. It also improves the form of the section's reference to the Act generally for the reasons set out in the explanation of bill sec. 3.

Bill section 38 corrects an error in AS 21.34.170(a). This subsection relates to reporting requirements concerning, among other things, allocations of aggregate tax in the surplus lines insurance context. The Department of Law brought to our attention that AS 21.34.150, which is referenced in subsection (a), relates to the different issues of originating or accepting surplus lines insurance. The Department of Law recommended AS 21.34.180, which does relate to surplus lines tax, as the correct cite. We agree.

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Bill section 39 corrects an error in AS 21.34.180(a) in its description of a tax that is imposed under AS 21.09.210. Subsection (a) refers to the tax imposed by AS 21.09.210 as a "premium receipts tax." In fact, AS 21.09.210 describes the tax imposed under its terms simply as a "premium tax." Accordingly, subsection (a)'s reference to this tax is corrected to reflect that.

In other sections, the use of "premium receipts tax" appears correct. "Premium receipts tax" is the description given to the tax imposed under AS 21.33.055(a) and under AS 21.33.061(c). These descriptions of the tax have been unchanged since the sections were enacted 1968. Accordingly, these occurrences of the "premium receipts tax" terminology are left unchanged.

Bill section 40 improves the form of AS 22.10.025(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 41 deletes obsolete provisions in AS 24.20.271 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section.

Bill section 42 deletes an obsolete reference to AS 26.05.260(c) in AS 26.05.330 to reflect the 1981 repeal of AS 26.05.260(c).

Bill section 43 updates AS 26.10.060(a) to reflect the repeal of federal law cited in the subsection. Specifically, subsections (b)-(h) of 50 U.S.C. App. 459, cited in the section, have been repealed by Act of Dec. 3, 1974, as shown in the notes relating to the 1974 amendments in the "History; Ancill. y Laws and Directives" section following the text of section 459 in the U.S.C.S. volumes. These repealed subsections contained the re-employment provisions mentioned in the material being deleted. The Department of Law recommends that the section be amended as shown, in light of the federal repeal.

Bill section 44 improves the form of AS 29.45.050(m) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 45 improves the form of AS 34.15.075(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 46 improves the form of AS 34.45.760(10) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 47 updates AS 36.30.170(b)(4) to reflect the repeal of the old Uniform Partnership Act, AS 32.05, by sec. 3, ch. 115, SLA 2000 and its replacement in sec. 6 of the same act by AS 32.06, the new Partnership Act.

Bill section 48 corrects an oversight in AS 37.14.410(a) relating to the prohibition on crediting certain funds to oil and hazardous substance ("OHS") release mitigation accounts. Currently, subsection (a) restricts certain money from being credited to "the

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oil and hazardous substance release mitigation account under AS 46.04.010 or to an account established in AS 46.08.020 or 46.08.025." (Emphasis added).

Problematically, AS 46.04.010 does not encompass one such account; it encompasses two. One is the OHS **release prevention** mitigation account, which is established in AS 46.08.020. The other is the OHS **release response** mitigation account, which is established in AS 46.08.025. It appears that the restriction was intended to apply to both OHS release mitigation accounts encompassed by 46.04.010, and this amendment, changing "the" to "an," makes that clear.

As originally enacted by sec. 1, ch. 1, FSSLA 1992, this subsection directed the crediting prohibition to "the oil and hazardous substance **release** mitigation account under AS 46.04.010 or AS 46.08.020." At that time there was only one such account. The account was described in AS 37.14.410(a) and in AS 46.04.010 as the "OHS **release** mitigation account," but it was referenced as OHS **release prevention** mitigation account in AS 46.08.020. In any event, because there was only one OHS release mitigation account in existence at the time, the "the" in AS 37.14.410(a) was correct.

However, in 1994 another OHS **release** mitigation account was established. Section 26, ch. 128, SLA 1994 enacted AS 46.08.025, which established the OHS **release response** mitigation account. In the same bill, sec. 19 changed the reference to "OHS **release** mitigation account" in AS 46.04.010 by adding "prevention" so that the reference read the "OHS **release prevention** mitigation account." This change conformed the existing reference in AS 46.04.010 to the reference in AS 46.08.020.

In addition to this change to AS 46.04.010, sec. 19 also inserted a new reference in the section to the "OHS **release response** mitigation account" that elsewhere had been established in AS 46.08.025. Thus, after these changes, AS 46.04.010 encompassed not one but two OHS **release** mitigation accounts. The "the" in 37.14.410(a) became incorrect.

Chapter 128's addition of the new OHS **release** mitigation account was only partially reflected in AS 37.14.410(a). Section 12 added to subsection (a)'s crediting prohibition the reference to accounts in AS 46.08.025 that exists today. This addition shows an intent that the account established there -- the OHS **release response** mitigation account -- was intended to be included in subsection (a)'s crediting restriction along with the OHS **release prevention** mitigation account in AS 46.08.020. Unfortunately, the corollary change -- turning the "the" preceding the reference to AS 46.04.010 to an "an" to reflect that that section now referenced both such accounts, was not made. That oversight is corrected here.

Bill section 49 improves the form of AS 38.05.073(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 50 improves the form of AS 38.95.050 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 51 improves the form of AS 41. 7.041(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 52 improves the form of AS 41.17.900(f) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 53 improves the form of AS 41.21.025(b) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of the subsection by capitalizing references to "Native," which is the preferred usage for legal drafting.

Bill section 54 corrects an error in AS 43.50.460(d)(1). This paragraph refers to AS 43.50.530 in the context of a requirement that certain tobacco product manufacturers appoint registered agents.

However, this referenced section, AS 43.50.530, does not relate in any way to providing notice of the appointment of registered agents. It instead relates to sales of cigarette tax stamps by the Department of Revenue. The correct reference is to AS 43.50.475, which does relate to notice of appointments, and paragraph (d)(1) is amended to reflect this.

Bill section 55 improves the form of AS 43.98.015(a) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3. It also improves the form of the subsection by capitalizing a reference to "Native," which is the preferred usage for legal drafting.

Bill section 56 improves the form of AS 43.98.015(b) in the subsection's reference to a particular subsection of the Alaska Native Claims Settlement Act ("ANCSA"), which is changed to reflect the codified version.

Bill section 57 deletes obsolete language in AS 44.27.056 relating to an outdated date reference.

Bill section 58 updates AS 44.29.210(a) to reflect the repeal of federal provisions cited in the subsection and to incorporate the federal provisions that replace the repealed provisions. Subsequent to this section's enactment, the Act of July 10, 1992 repealed 42 U.S.C. sec. 300x-4a and 42 U.S.C. sec. 300x-2. That same act enacted 42 U.S.C. 300x-25, which allows the secretary of the Department of Health and Human Services to make grants to the state if the state sets up a certain type of revolving loan fund relating to alcohol or drug abuse. This is similar to the subject matter of AS 44.29.210 and of repealed 42 U.S.C. 300x-4a, and 42 U.S.C. 300x-25 appears to have been intended as the replacement for repealed sec. 300x-4a.

Although 42 U.S.C. 300x-2 has been repealed by the same act that repealed 300x-4, there is still a 300x-2 in the federal code because, unlike Alaska, the federal code re-uses section numbers. However, the current 300x-2 relates to "children with serious emotional disturbances" and thus does not appear to have been intended as a replacement for repealed 300x-2. On the other hand, sec. 300x-25 itself cites 42 U.S.C. 300x-21, which was also enacted by the same federal act that repealed 300x-2 and 300x-4 and enacted 300x-25. 42 U.S.C. 300x-21 relates to federal grants for substance abuse and thus appears to have been intended to have been the replacement for repealed 300x-2. These substitutions are made in this section.

Bill section 59 updates AS 44.29.210(c) to reflect the repeal of a federal provision for the reason set out in the explanation of bill sec. 58.

Bill section 60 deletes obsolete language in AS 44.42.065(a) relating to an outdated date reference.

Bill section 61 deletes obsolete language in AS 44.62.350(c) relating to an outdated date reference.

Bill section 62 deletes obsolete language in AS 44.66.050 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section. Note that the term "program" is left in place in certain parts of the section because of its generic use in AS 44.66.050(d)(2) encompassing boards and commissions, which are also left in place.

Bill section 63 updates AS 44.66.060 to reflect the repeal of AS 44.66.020 and 44.66.030 in this bill's repeal section.

Bill section 64 updates AS 44.83.425 to reflect the repeal of AS 44.83.380 in 1993.

Bill section 65 updates AS 44.88.085(c) to reflect the repeal of (h) of this section in 1998.

Bill section 66 improves the form of AS 45.55.138 in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 67 updates AS 45.57.090 to reflect the 1988 repeal of AS 10.05.597 - 10.05.696, which was the former article on foreign corporations, and the replacement of those sections by AS 10.06.705 - 10.06.788, which is the new article on foreign corporations.

Bill section 68 improves the form of AS 46.03.822(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 69 improves the form of AS 46.14.010(b) by conforming a state air quality control term relating to emissions to the term's federal counterpart as required by federal law. In 2003, sec. 59 of HB 160, which was sponsored by the House Rules Committee at

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the request of the governor, added the definition of "emission unit" to AS 46.14.990. AS 46.14.990 provides the definitions for AS 46.14, which deals with air quality control, and the "emission unit" definition in AS 46.14.990 adopted the federal regulations definition by reference.

As it turns out, the federal definition is in fact "emissions unit" -- with an "s" -- and federal regulations require exact conformity with federal definitions in this area. Furthermore, the Environmental Protection Agency has recently contacted the Department of Law to remind the department of this requirement. At the request of the department, this change is made in this subsection and throughout AS 46.14.

Bill section 70 improves the form of AS 46.14.010(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 71 improves the form of AS 46.14.010(d) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 72 improves the form of AS 46.14.010(e) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 73 improves the form of AS 46.14.010(f) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 74 improves the form of AS 46.14.020 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 75 improves the form of AS 46.14.130(b) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 76 improves the form of AS 46.14.180 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 77 improves the form of AS 46.14.190(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 78 improves the form of AS 46.14.210 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation to bill sec. 70.

Bill section 79 improves the form of AS 46.14.250(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 80 deletes obsolete language in AS 46.14.250(f) to reflect the repeal of AS 46.14.250(e) in this bill's repeal section.

Bill section 81 improves the form of AS 46.14.400(c) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 82 improves the form of AS 46.14.400(f) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 83 improves the form of AS 46.14.410(e) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 84 improves the form of AS 46.14.515(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 85 improves the form of AS 46.14.540(a) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 86 improves the form of AS 46.14.560 by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 87 improves the form of AS 46.14.990(11) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 88 improves the form of AS 46.14.990(20) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

Bill section 89 improves the form of AS 46.14.990(21) by conforming a state air quality control term to the term's federal counterpart as required by federal law for the reason set out in the explanation of bill sec. 70.

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Bill section 90 improves the form of AS 46.15.165(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 91 improves the form of AS 47.07.020(b) by removing initial capital letters in a reference to the aid to families with dependent children program to conform the reference to other references to the identical program in the same section and by conforming age references to the preferred usage for legal drafting.

Bill section 92 improves the form of AS 47.08.060(c) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 93 improves the form of AS 47.55.020(d) in its reference to the Alaska Native Claims Settlement Act for the reasons set out in the explanation of bill sec. 3.

Bill section 94 is the repeal section.

The repeal of AS 14.08.031(d) removes obsolete material relating to the Bureau of Indian Affairs. Subsection (d) provided that "U.S. Bureau of Indian Affairs schools shall be included in a regional educational attendance area boundary," and this provision is obsolete for the reasons set out in the explanation of bill sec. 25.

The repeal of AS 18.50.950(4) removes obsolete language from the statutes. Specifically, paragraph (4) is the definition for the term "child adoption agency" for AS 18.50, the Vital Statistics Act. It is being repealed on the recommendation of the Department of Law, which correctly points out that the term "child adoption agency" is not used in the chapter anywhere and thus is extraneous.

The repeal of AS 44.66.020 removes an obsolete section for the statutes. This section, enacted in 1977, is an artifact of program budgeting, which is no longer used in this state. A glance at any recent operating budget or review of AS 37.07, the Executive Budget Act, reveals the obvious: budgeting is now done by agency, which is the governmental subunit that administers the program, and not by the program itself. See, e.g. AS 37.07.010(1) and (2); 37.07.020(a).

The repeal of AS 44.66.030 removes an obsolete section from the statutes. This section, enacted in 1977, is an artifact of program budgeting, which is no longer used in this state.

The repeal of AS 46.14.250(e) removes obsolete material from AS 46.14.250. Subsection (e) relates to the Department of Environmental Conservation's duty to set an "initial fee rate" for emission fees established in AS 46.14.250 for "the first two years following approval of the permit program" under AS 46.14 by the relevant federal administrator (chapter 46.14 is entitled "Air Quality Control").

The effective date of the approval in question was December 5, 1996, as set out in the Federal Register, Vol. 61, No. 235, Thursday, December 5, 1996, pp. 64463-64475.

Scnator Ralph Seekins  
March 3, 2005  
Page 13

Obviously, more than two years have passed since the effective date of approval, and this subsection has thus become obsolete.

Bill section 95 provides an immediate effective date for the bill.

JPC:jad  
05-137.jad

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 101(STA)  
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: All  
 Title An Act making corrective amendments RDU \_\_\_\_\_  
to the Alaska Statutes Component \_\_\_\_\_  
 Sponsor Senate Rules Committee \_\_\_\_\_  
 Requester Senate State Affairs Committee Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Revisor's bill does not change substantive law and has no fiscal impact on any state agency.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676  
 Division: Office of Management and Budget Date/Time 2/23/05 8:46 AM  
 Approved by: Cheryl Frasca, Director Date 2/23/2005  
 Agency: Office of Management and Budget

**SB**

**104**

# SENATE COMMITTEE REPORT

DATE: 2/28/05

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 104

## SB 104 PERMANENT FUND DIVIDEND FRAUD

"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_


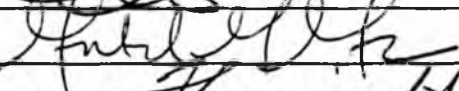
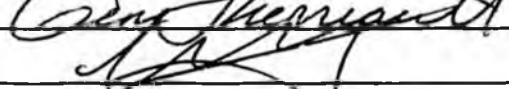
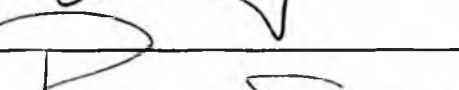
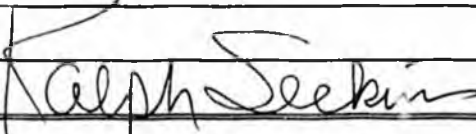
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
			X	
			X	
	X			
	X			
CHAIR: 	✓			

24-LS0519U  
Cook  
3/1/05

**CS FOR SENATE BILL NO. 104( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR SEEKINS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the crimes of unsworn falsification in the first and second degrees**  
2 **and false information or report; requiring the establishment of a permanent fund**  
3 **dividend fraud investigation unit in the Department of Revenue; and providing for an**  
4 **effective date."**

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

6 **\* Section 1. AS 05.15.095(a) is amended to read:**

7 (a) The applications and reports to the department required by this chapter  
8 shall be signed under penalty of unsworn falsification in the second degree by the  
9 following person, as applicable:

- 10 (1) the member in charge for the qualified organization;
- 11 (2) a person authorized to sign on behalf of the municipality;
- 12 (3) the operator or the operator's agent;
- 13 (4) the licensed pull-tab distributor or the distributor's agent; or
- 14 (5) the licensed pull-tab manufacturer or the manufacturer's agent.

1 \* Sec. 2. AS 05.15.680(b) is amended to read:

2 (b) A person who, with the intent to mislead a public servant in the  
3 performance of the public servant's duty, subn.its a false statement in an application  
4 for a permit, license, or vendor registration under this chapter is guilty of unsworn  
5 falsification in the second degree.

6 \* Sec. 3. AS 06.05.045(a) is amended to read:

7 (a) Each state bank shall make at least four reports of condition each year to  
8 the department on days designated by, and on forms prescribed by, the department.  
9 The report shall be signed by a duly authorized officer of the bank and shall be signed  
10 by at least three directors who certify under penalty of unsworn falsification in the  
11 second degree under AS 11.56.210 that they, and each of them, have personal  
12 knowledge of the facts stated in the report and that the facts are true. The reports must  
13 exhibit in detail and under appropriate heads the resources and liabilities of the bank  
14 and must be received by the department within 30 calendar days after the end of the  
15 period covered by the report.

16 \* Sec. 4. AS 06.50.310(a) is amended to read:

17 (a) On or before March 15 of each year, a licensee shall file with the  
18 department a composite annual report for the preceding calendar year in the form  
19 prescribed by the department relating to all advances made by the licensee. The  
20 department may require that the report be submitted under oath or affirmation, or with  
21 notice that false statements made are punishable as unsworn falsification in the  
22 second degree under AS 11.56.210.

23 \* Sec. 5. AS 08.88.460(a) is amended to read:

24 (a) Subject to (e) of this section, a person seeking reimbursement for a loss  
25 suffered in a real estate transaction as a result of fraud, misrepresentation, deceit, or  
26 the conversion of trust funds or the conversion of community association accounts  
27 under the control of a community association manager on the part of a licensee  
28 licensed under this chapter shall make a claim to the commission for reimbursement  
29 on a form furnished by the commission. In order to be eligible for reimbursement by  
30 the commission, the claim form must be filed within two years after the occurrence of  
31 the fraud, misrepresentation, deceit, or conversion of trust funds or the conversion of

1 community association accounts under the control of a community association  
2 manager claimed as the basis for the reimbursement. The form shall be executed under  
3 penalty of unsworn falsification in the second degree and must include the following:

- 4 (1) the name and address of each real estate licensee involved;
- 5 (2) the amount of the alleged loss;
- 6 (3) the date or period of time during which the alleged loss occurred;
- 7 (4) the date upon which the alleged loss was discovered;
- 8 (5) the name and address of the claimant; and
- 9 (6) a general statement of facts relative to the claim.

10 \* Sec. 6. AS 10.20.655(b) is amended to read:

11 (b) The interrogatories shall be answered within 30 days after mailing, or  
12 within the additional time fixed by the commissioner, and the answers shall be full and  
13 complete, in writing and under penalty of unsworn falsification in the second degree  
14 under AS 11.56.210. If the interrogatories are directed to an individual, they shall be  
15 answered by that individual and, if directed to a corporation, they shall be answered by  
16 the president, vice-president, secretary, or assistant secretary of the corporation.

17 \* Sec. 7. AS 11.56 is amended by adding a new section to read:

18 **Sec. 11.56.205. Unsworn falsification in the first degree.** (a) A person  
19 commits the crime of unsworn falsification in the first degree if the person violates  
20 AS 11.56.210(a)(1) and the application is an application for a permanent fund  
21 dividend.

22 (b) In this section,

23 (1) "application for a permanent fund dividend" includes a written or  
24 electronic application and any other documentation submitted to support an  
25 application for a permanent fund dividend;

26 (2) "permanent fund dividend" has the meaning given in  
27 AS 43.23.095.

28 (c) Unsworn falsification in the first degree is a class C felony.

29 \* Sec. 8. AS 11.56.210 is amended to read:

30 **Sec. 11.56.210. Unsworn falsification in the second degree.** (a) A person  
31 commits the crime of unsworn falsification in the second degree if, with the intent to

1 mislead a public servant in the performance of a duty, the person submits a false  
2 written or recorded statement that [WHICH] the person does not believe to be true

3 (1) in an application for a benefit; or

4 (2) on a form bearing notice, authorized by law, that false statements  
5 made in it are punishable.

6 (b) Unsworn falsification in the second degree is a class A misdemeanor.

7 \* Sec. 9. AS 11.56.220 is amended to read:

8 **Sec. 11.56.220. Proof of guilt.** In a prosecution for perjury or unsworn  
9 falsification in the first or second degree it is not necessary that proof be made by a  
10 particular number of witnesses or by documentary or other type of evidence.

11 \* Sec. 10. AS 11.56.800(a) is amended to read:

12 (a) A person commits the crime of false information or report if the person  
13 knowingly

14 (1) gives false information to a peace officer

15 (A) with the intent of implicating another in an offense; or

16 (B) concerning the person's identity while the person is

17 (i) under arrest, detention, or investigation for a crime;

18 or

19 (ii) being served with an arrest warrant or being issued a

20 citation;

21 (2) makes a false report to a peace officer that a crime has occurred or  
22 is about to occur;

23 (3) makes a false report or gives a false alarm, under circumstances not  
24 amounting to terroristic threatening in the second degree under AS 11.56.810, that a  
25 fire or other incident dangerous to life or property calling for an emergency response  
26 has occurred or is about to occur; [OR]

27 (4) makes a false report to the Department of Natural Resources under  
28 AS 46.17 concerning the condition of a dam or reservoir; or

29 (5) gives false information to a public employee relating to a  
30 person's eligibility for a permanent fund dividend under AS 43.23 and the false  
31 information does not also violate AS 11.56.210.

1 \* **Sec. 11.** AS 12.55.045(j) is amended to read:

2 (j) A defendant who is convicted of an offense for which restitution may be  
3 ordered shall submit financial information as ordered by the court. The Alaska Court  
4 System shall prepare a form, in consultation with the Department of Law, for the  
5 submission of the information; the form must include a warning that submission of  
6 incomplete or inaccurate information is punishable as unsworn falsification in the  
7 second degree under AS 11.56.210. A defendant who is convicted of (1) a felony  
8 shall submit the form to the probation office within 30 days after conviction, and the  
9 probation officer shall attach the form to the presentence report, or (2) a misdemeanor  
10 shall file the form with the defendant's response or opposition to the restitution  
11 amount. The defendant shall provide a copy of the completed form to the prosecuting  
12 authority.

13 \* **Sec. 12.** AS 16.05.450(a) is amended to read:

14 (a) The commissioner or an authorized agent shall issue a crewmember fishing  
15 license under AS 16.05.480 to each qualified person who files a written application at  
16 a place in the state designated by the commissioner, containing the reasonable  
17 information required by the commissioner together with the required fee. The  
18 commissioner shall require the reporting of the applicant's social security number on  
19 the application. The application shall be simple in form and shall be executed by the  
20 applicant under the penalty of unsworn falsification in the second degree. I

21 \* **Sec. 13.** AS 16.05.450(b) is amended to read:

22 (b) The Alaska Commercial Fisheries Entry Commission shall issue a vessel  
23 license under AS 16.05.490 to each qualified vessel for which a written application  
24 has been filed, at a place in the state designated by the commission, containing the  
25 reasonable information required by the commission together with the required fee.  
26 The application shall be simple in form and shall be executed by the applicant under  
27 the penalty of unsworn falsification in the second degree.

28 \* **Sec. 14.** AS 16.43.970(b) is amended to read:

29 (b) A person or entity who knowingly makes a false statement to the  
30 commission for the purpose of obtaining a benefit, including the issuance, renewal,  
31 duplication, or transfer of an entry or interim-use permit, vessel license, vessel

1 interim-use permit, or vessel entry permit, or a person who assists another by  
2 knowingly making a false statement to the commission for the purpose of obtaining a  
3 benefit for another, is guilty of the crime of unsworn falsification in the second  
4 degree as set out in AS 11.56.210. Upon conviction, the person or entity is also  
5 subject to suspension of commercial fishing privileges and revocation of commercial  
6 fishing permits under (i) of this section.

7 \* Sec. 15. AS 18.60.095(f) is amended to read:

8 (f) A person who knowingly makes a false statement, representation, or  
9 certification with the intent to mislead in an application, record, report, plan or other  
10 document filed or required to be maintained under AS 18.60.010 - 18.60.105 is guilty  
11 of unsworn falsification in the second degree.

12 \* Sec. 16. AS 18.65.710(a) is amended to read:

13 (a) The application for a permit to carry a concealed handgun must contain the  
14 following information:

15 (1) the applicant's name, physical residence, mailing address, place and  
16 date of birth, physical description, including height, weight, race, hair color, and eye  
17 color, Alaska driver's license or identification card number, and the city and state of  
18 each place the applicant has resided in the five years immediately preceding the  
19 application;

20 (2) a statement that the applicant qualifies under AS 18.65.705;

21 (3) a statement that the applicant has been furnished with a copy of the  
22 state laws and regulations relating to concealed handguns, has read those sections, and  
23 understands them;

24 (4) a statement that the applicant desires a permit to carry a concealed  
25 handgun for a lawful purpose, which may include self-defense;

26 (5) a statement by the applicant that all statements, answers, and  
27 attachments to the application are true and complete;

28 (6) a conspicuous warning that an applicant who supplies a false  
29 statement, answer, or document in connection with the application that the applicant  
30 does not believe to be true may be prosecuted for unsworn falsification in the second  
31 degree and, if found guilty, may be punished for violation of a class A misdemeanor,

1 and that, in such cases, the permit shall be revoked and the applicant may be barred  
2 from any further application for a permit; and

3 (7) a statement that the applicant understands that a permit eligibility  
4 investigation will be conducted as a part of the application process, that this may  
5 involve computerized records searches, and that the applicant authorizes the  
6 investigation.

7 \* **Sec. 17.** AS 21.27.110(h) is amended to read:

8 (h) A notice of termination submitted to the director under this section must  
9 include a statement of the reasons for the termination. A statement of the reasons for  
10 termination is confidential and not subject to inspection and copying under  
11 AS 40.25.110. A statement of reasons for the termination may not be admitted as  
12 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,  
13 or authorized representative by or on behalf of a person affected by the termination,  
14 except when the action or proceeding involves perjury, unsworn falsification in the  
15 second degree, fraud, or failure to comply with this subsection.

16 \* **Sec. 18.** AS 28.35.130 is amended to read:

17 **Sec. 28.35.130. False report or destruction of evidence.** An officer or  
18 person who knowingly makes or subscribes a false report concerning an investigation  
19 of a vehicle or damage or injury caused by a vehicle, as provided in this chapter, is  
20 guilty of unsworn falsification in the second degree. A person who destroys,  
21 obliterates, conceals or removes, or who aids, abets, or assists in the destruction,  
22 obliteration, concealment, or removal from a vehicle, of evidence showing or tending  
23 to show that the vehicle collided with a person or property, is punishable by a fine of  
24 not more than \$500, or by imprisonment for not more than six months, or by both.

25 \* **Sec. 19.** AS 28.35.135(a) is amended to read:

26 (a) A person may not knowingly make a false affidavit, statement, or  
27 representation, or affirm falsely with respect to a matter or fact required to be set out  
28 under this title, nor may the person use a name other than the person's true name. A  
29 person convicted of violating this section is guilty of unsworn falsification in the  
30 second degree and is punishable as prescribed by law.

31 \* **Sec. 20.** AS 43.23.055 is amended by adding a new paragraph to read:

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(10) establish a fraud investigation unit for the purpose of assisting the

(A) Department of Law in the prosecution of individuals who apply for or obtain a permanent fund dividend in violation of a provision in AS 11, by detecting and investigating those crimes; and

(B) commissioner to detect and investigate the claiming or paying of permanent fund dividends that should not have been claimed by or paid to an individual and to impose the penalties and enforcement provisions under AS 43.23.035.

\* Sec. 21. AS 43.65.020(a) is amended to read:

(a) A person subject to tax under this chapter shall make a return stating specifically the items of gross income from the property, including royalty received and the deductions and credits allowed by this chapter and the exploration incentive credit authorized by AS 27.30, and other information for carrying out this chapter that the department prescribes. The return must show the mining license number and must be signed by the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn falsification in the second degree. If receivers, trustees, or assigns are operating the property or business, they shall make returns for the person engaged in mining, or the recipient of royalty in connection with mining property. The tax due on the basis of the returns shall be collected in the same manner as if collected from the person of whose business they have custody and control. In a tax year in which a taxpayer applies against the tax levied under this chapter the exploration incentive credit authorized by AS 27.30, the commissioner shall require the taxpayer to submit the accounting of mining operation activities form required by AS 27.30.030(b).

\* Sec. 22. AS 43.75.030(a) is amended to read:

(a) A person subject to the tax shall file a return stating the value of fisheries resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return must show the license number and must be signed by the taxpayer or an authorized agent, under penalty of unsworn falsification in the second degree. If a receiver, trustee, or assign is operating the property or business, that person shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner

1 as if collected from the person of whose business the receiver, trustee, or assign has  
2 custody and control.

3 \* **Sec. 23.** AS 43.75.110 is amended to read:

4 **Sec. 43.75.110. Duty of taxpayer and payment of tax.** A person subject to  
5 taxes under AS 43.75.100 shall make a return stating the value of fisheries resources  
6 taken, purchased, or otherwise acquired during the license year for sale to fisheries  
7 businesses outside of the taxing jurisdiction of the state computed as required by  
8 AS 43.75.100, and other information to carry out the provisions of AS 43.75.100 as  
9 may be prescribed by the department. The return must contain the license number and  
10 must be signed by the taxpayer or an authorized agent, under penalty of unsworn  
11 falsification in the second degree. If a receiver, trustee, or assign is operating the  
12 property or business, that person shall make the return for the person. A tax due on  
13 the basis of such return shall be collected in the same manner as if collected from the  
14 person of whose business the receiver, trustee, or assign has custody and control. The  
15 requirements for time and place of payment of tax, and the obligation to keep records  
16 and make the records available to the commissioner are the same as those prescribed  
17 in AS 43.75.011 - 43.75.050.

18 \* **Sec. 24.** AS 45.63.010(d) is amended to read:

19 (d) The notice of intent must be on a form or in a format provided and  
20 established by the department by regulation. The department may require the notice  
21 of intent to be submitted under oath or affirmation or with notice that false statements  
22 made are punishable as unsworn falsification in the second degree under  
23 AS 11.56.210. The notice of intent must include detailed information about the nature  
24 of the solicitation campaign and the identity and business practices of the telephone  
25 seller, including information on the employees, agents, and officers affiliated with the  
26 telephone seller. The notice of intent must disclose criminal convictions, civil  
27 judgments, orders, consent decrees, or administrative determinations involving  
28 allegations of unfair or deceptive business practices by the telephone seller.

29 \* **Sec. 25.** AS 45.68.010(f) is amended to read:

30 (f) The department may require the registration and registration renewal  
31 statement required under (c)(1) and (d) of this section to be submitted

1 (1) under oath or affirmation; or

2 (2) with notice that false statements made in the statement are  
3 punishable as unsworn falsification in the second degree under AS 11.56.210.

4 \* Sec. 26. AS 45.68.055(c) is amended to read:

5 (c) The authorized contracting agent for the paid solicitor shall sign the report  
6 required by (b) of this section. Signature of the report under this subsection must be  
7 made under oath or affirmation, but submission of false information in a notice that is  
8 not signed under oath or affirmation is punishable as an unsworn falsification in the  
9 second degree under AS 11.56.210.

10 \* Sec. 27. AS 46.03.550(a) is amended to read:

11 (a) Property for which a notice has been issued under AS 46.03.500 shall be  
12 determined by the department to be fit for use if the owner certifies to the department  
13 under penalty of unsworn falsification in the second degree that

14 (1) based on sampling and testing procedures established by the  
15 department under AS 46.03.520(b) and performed by laboratories that are on the list  
16 maintained by the department under AS 46.03.520(c), the limits on substances  
17 specified in regulations adopted under AS 46.03.530 are not exceeded on the property;

18 (2) if the property was ever sampled and tested under AS 46.03.520  
19 and the test results showed the property to be unfit for use under AS 46.03.530,  
20 decontamination procedures were performed in accordance with the guidelines  
21 established under AS 46.03.540(b) and the requirements of (1) of this subsection have  
22 been met; or

23 (3) a court has held that the determination that the property was an  
24 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

25 \* Sec. 28. AS 47.12.120(b) is amended to read:

26 (b) If the minor is not subject to (j) of this section and the court finds that the  
27 minor is delinquent, it shall

28 (1) order the minor committed to the department for a period of time  
29 not to exceed two years or in any event extend past the day the minor becomes 19  
30 years of age, except that the department may petition for and the court may grant in a  
31 hearing (A) two-year extensions of commitment that do not extend beyond the minor's

1 19th birthday if the extension is in the best interests of the minor and the public; and  
2 (B) an additional one-year period of supervision past age 19 if continued supervision  
3 is in the best interests of the person and the person consents to it; the department shall  
4 place the minor in the juvenile facility that the department considers appropriate and  
5 that may include a juvenile correctional school, juvenile work camp, treatment facility,  
6 detention home, or detention facility; the minor may be released from placement or  
7 detention and placed on probation on order of the court and may also be released by  
8 the department, in its discretion, under AS 47.12.260;

9 (2) order the minor placed on probation, to be supervised by the  
10 department, and released to the minor's parents, guardian or a suitable person; if the  
11 court orders the minor placed on probation, it may specify the terms and conditions of  
12 probation; the probation may be for a period of time not to exceed two years and in no  
13 event to extend past the day the minor becomes 19 years of age, except that the  
14 department may petition for and the court may grant in a hearing

15 (A) two-year extensions of supervision that do not extend  
16 beyond the minor's 19th birthday if the extension is in the best interests of the  
17 minor and the public; and

18 (B) an additional one-year period of supervision past age 19 if  
19 the continued supervision is in the best interests of the person and the person  
20 consents to it;

21 (3) order the minor committed to the custody of the department and  
22 placed on probation, to be supervised by the department and released to the minor's  
23 parents, guardian, other suitable person, or suitable nondetention setting such as with a  
24 relative or in a foster home or residential child care facility, whichever the department  
25 considers appropriate to implement the treatment plan of the predisposition report; if  
26 the court orders the minor placed on probation, it may specify the terms and conditions  
27 of probation; the department may transfer the minor, in the minor's best interests, from  
28 one of the probationary placement settings listed in this paragraph to another, and the  
29 minor, the minor's parents or guardian, the minor's foster parent, and the minor's  
30 attorney are entitled to reasonable notice of the transfer; the probation may be for a  
31 period of time not to exceed two years and in no event to extend past the day the

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minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment that do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(4) order the minor and the minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection; under this paragraph,

(A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication; under this subparagraph, the court may require the minor to use the services of a community dispute resolution center that has been recognized by the commissioner under AS 47.12.450(b) to resolve any dispute between the minor and the victim of the minor's offense as to the amount of or manner of payment of the restitution;

(B) the court may not order payment of restitution by the parent of a minor who is a runaway or missing minor for an act of the minor that was 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; for purposes of this subparagraph, "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; and

(C) at the request of the department, the Department of Law, the victims' advocate, or on its own motion, the court shall, at any time, order the minor and the minor's parent, if applicable, to submit financial information

1 on a form approved by the Alaska Court System to the court, the department,  
2 and the Department of Law for the purpose of establishing the amount of  
3 restitution or enforcing an order of restitution under AS 47.12.170; the form  
4 must include a warning that submission of incomplete or inaccurate  
5 information is punishable as unsworn falsification in the second degree under  
6 AS 11.56.210;

7 (5) order the minor committed to the department for placement in an  
8 adventure-based education program established under AS 47.21.020 with conditions  
9 the court considers appropriate concerning release upon satisfactory completion of the  
10 program or commitment under (1) of this subsection if the program is not satisfactorily  
11 completed;

12 (6) in addition to an order under (1) - (5) of this subsection, order the  
13 minor to perform community service; for purposes of this paragraph, "community  
14 service" includes work

15 (A) on a project identified in AS 33.30.901; or

16 (B) that, on the recommendation of the city council or  
17 traditional village council, would benefit persons within the city or village who  
18 are elderly or disabled; or

19 (7) in addition to an order under (1) - (6) of this subsection, order the  
20 minor's parent or guardian to comply with orders made under AS 47.12.155, including  
21 participation in treatment under AS 47.12.155(b)(1).

22 \* Sec. 29. This Act takes effect July 1, 2005.

# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax



Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 458-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## **Senate Bill 104 Sponsor Statement**

**"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue."**

Senate Bill 104 seeks to strengthen the Department of Revenue's ability to investigate fraud associated with making a false application for a permanent fund dividend. Furthermore, submission of a fraudulent permanent fund dividend application would become a class C felony.

In 2004 the Department of Revenue (DOR) examined over 1,600 fraud tips and audited over 1,700 permanent fund dividend (PFD) applications suspected of being fraudulent. This resulted in \$1.4 million in denied or assessed dividends (1,500+ applications). Furthermore, there were three federal indictments and one conviction for crimes involving PFD fraud.

The most common PFD fraud offense involves persons who forge the signature of another on the application (or related documents) with the intent of receiving a dividend to which they are not entitled. It's important to note that the bill is not intended to capture, for example, cases where husbands or wives sign for each other. However, the provisions of this legislation would apply in cases where the individual is attempting to steal from another person or from the state.

Current law (AS 11.46.500 - 510) describes three separate degrees of forgery — the two most serious offenses are punishable as class B and C felonies, but are limited to cases involving various types of financial instruments such as currency, securities, deeds of trust, etc.

Forgery in the third degree covers instances where a person intentionally makes a false statement on a written instrument (such as a PFD application). However, this offense is punishable as a class A misdemeanor only. The DOR's proposal to elevate PFD fraud from a simple misdemeanor to a class C felony is expected to provide a more effective deterrent for this type of theft.

Furthermore, Senate Bill 104 aids in identifying and curing instances of permanent fund dividend fraud by codifying in statute a fraud investigation unit within the Department of Revenue. This unit will assist the Department of Law in detecting and investigating instances of PFD fraud.

24-LS0519\Y  
Cook  
2/28/05

**CS FOR SENATE BILL NO. 104( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR SEEKINS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the crime of misrepresenting permanent fund dividend eligibility;**  
2 **requiring the establishment of a permanent fund dividend fraud investigation unit in the**  
3 **Department of Revenue; and providing for an effective date."**

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

5 **\* Section 1.** AS 11.56.210(a) is amended to read:

6 (a) A person commits the crime of unsworn falsification if, under  
7 circumstances not proscribed under AS 11.56.225, with the intent to mislead a  
8 public servant in the performance of a duty, the person submits a false written or  
9 recorded statement that [WHICH] the person does not believe to be true

10 (1) in an application for a benefit; or

11 (2) on a form bearing notice, authorized by law, that false statements  
12 made in it are punishable.

13 **\* Sec. 2.** AS 11.56 is amended by adding a new section to read:

14 **Sec. 11 56.225. Misrepresenting permanent fund dividend eligibility. (a)**

1 A person commits the crime of misrepresenting permanent fund dividend eligibility if  
2 the person

3 (1) submits an application for a permanent fund dividend for that  
4 person or for another person for a dividend year knowing that the application contains  
5 false information relating to eligibility for the permanent fund dividend;

6 (2) knowingly gives false information to a public employer relating to  
7 any person's eligibility for a permanent fund dividend.

8 (b) In this section,

9 (1) "application for a permanent fund dividend" includes a written or  
10 electronic application, and any other documentation submitted to support an  
11 application for permanent fund dividend;

12 (2) "permanent fund dividend" has the meaning given in  
13 AS 43.23.095.

14 (c) Misrepresenting permanent fund dividend eligibility is a class C felony.

15 \* Sec. 3. AS 43.23.055 is amended by adding a new paragraph to read:

16 (10) establish a fraud investigation unit for the purpose of assisting the

17 (A) Department of Law in the prosecution of individuals who  
18 apply for or obtain a permanent fund dividend in violation of a provision in  
19 AS 11, by detecting and investigating those crimes; and

20 (B) commissioner to detect and investigate the claiming or  
21 paying of permanent fund dividends that should not have been claimed by or  
22 paid to an individual and to impose the penalties and enforcement provisions  
23 under AS 43.23.035.

24 \* Sec. 4. This Act takes effect July 1, 2005.

**CS FOR SENATE BILL NO. 104(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Offered: 2/28/05**  
**Referred: Judiciary**

**Sponsor(s): SENATOR SEEKINS**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to the crime of misrepresenting permanent fund dividend eligibility;**  
2 **requiring the establishment of a permanent fund dividend fraud investigation unit in the**  
3 **Department of Revenue; and providing for an effective date."**

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

5 **\* Section 1. AS 11.56.210(a) is amended to read:**

6 (a) A person commits the crime of unsworn falsification if, under  
7 circumstances not proscribed under AS 11.56.225, with the intent to mislead a  
8 public servant in the performance of a duty, the person submits a false written or  
9 recorded statement that [WHICH] the person does not believe to be true  
10 (1) in an application for a benefit; or  
11 (2) on a form bearing notice, authorized by law, that false statements  
12 made in it are punishable.

13 **\* Sec. 2. AS 11.56 is amended by adding a new section to read:**

14 **Sec. 11.56.225. Misrepresenting permanent fund dividend eligibility. (a)**

1 A person commits the crime of misrepresenting permanent fund dividend eligibility if  
2 the person

3 (1) submits an application for a permanent fund dividend for that  
4 person or for another person for a dividend year knowing that the person or other  
5 person is not eligible to receive the dividend;

6 (2) makes a statement in an application for a permanent fund dividend  
7 and the person would have violated AS 11.56.210 if the statement were not an  
8 application for a permanent fund dividend; or

9 (3) makes a false written, recorded, or oral statement that the person  
10 does not believe to be true to a public employee with intent to mislead a public  
11 employee about a person's eligibility for a permanent fund dividend.

12 (b) In this section,

13 (1) "application for a permanent fund dividend" includes a written or  
14 electronic application, and any other documentation submitted to support an  
15 application for permanent fund dividend;

16 (2) "permanent fund dividend" has the meaning given in  
17 AS 43.23.095.

18 (c) Misrepresenting permanent fund dividend eligibility is a class C felony.

19 \* Sec. 3. AS 43.23.055 is amended by adding a new paragraph to read:

20 (10) establish a fraud investigation unit for the purpose of assisting the

21 (A) Department of Law in the prosecution of individuals who  
22 apply for or obtain a permanent fund dividend in violation of a provision in  
23 AS 11, by detecting and investigating those crimes; and

24 (B) commissioner to detect and investigate the claiming or  
25 paying of permanent fund dividends that should not have been claimed by or  
26 paid to an individual and to impose the penalties and enforcement provisions  
27 under AS 43.23.035.

28 \* Sec. 4. This Act takes effect July 1, 2005.

ral estoppel doctrine; however, un-  
cts of this case, there were different  
, and the second indictment follow-  
dismissal of the original indictment  
d. DeMan v. State, 677 P.2d 903  
.984).

Prosecutions for same transaction.  
nt's perjury and misleading securi-  
t at the same act as the mail fraud for  
convicted in federal court, AS  
t bar the state from pursuing its  
a court for the perjury and mislead-  
ngs charges, because AS 12.20.010  
uccessive prosecutions for offenses  
same transaction or episode; rather,  
ve prosecutions for offenses based on  
l act. State v. Bonham, 28 P.3d 303  
2001).

nses. — Count charging that defend-  
l specific false statements concern-  
nt in a car bombing merged with  
hich appeared to include specific  
a defendant was charged with in the  
therefore only one conviction could  
v. State, 797 P.2d 677 (Alaska Ct.

versed. — Where the state did not  
eman was unavailable to testify  
be interpreted in light of the consti-  
confrontation, it was error to admit  
d testimony into evidence at trial  
eals could not conclude with any  
ity that the erroneous admission  
was harmless. Bentley v. State, 70  
a Ct. App. 1985).

fficient to sustain conviction  
Esmailka v. State, 740 P.2d 46  
1987).

to present exculpatory evidence  
by withholding FBI report, which  
have established defendant's guilt  
are the defendant's version of events  
incredible. Defendant was guilty  
State, 851 P.2d 1365 (Alaska Ct. App.  
ed, 510 U.S. 1100, 114 S. Ct. 942  
994).

— Where defendant is convicted  
t offender, in the absence of aggravat-  
ould receive a sentence substantially  
than the four-year presumptive  
id-felony offender; a sentence of three  
and one-half years suspended clear-  
quirement. Esmailka v. State, 740 P.  
App. 1987).

oyles v. State, 647 P.2d 1113 (Alaska  
Gargan v. State, 805 P.2d 993 (Alaska

ver v. State, 641 P.2d 1263 (Alaska  
sh v. State, 678 P.2d 423 (Alaska  
mandez v. State, 691 P.2d 287 (Alaska  
Moore v. State, 740 P.2d 472 (Alaska  
Stumpf v. State, 749 P.2d 880 (Alaska  
Gregg v. Gregg, 776 P.2d 1041 (Alaska  
Brueggeman, 24 P.3d 583 (Alaska  
wson v. Helmer, 77 P.3d 724 (Alaska

**Sec. 11.56.210. Unsworn falsification.** (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

- (1) in an application for a benefit; or
- (2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

**Cross references.** — For the crime of false information or report, see AS 11.56.800.

#### NOTES TO DECISIONS

**Double jeopardy.** — Criminal prosecution for unsworn falsification was not barred on double jeopardy grounds in the case of a person who had lied in her unemployment insurance benefits application and

subsequently agreed to repay the unlawfully obtained benefits plus the fifty-percent penalty specified in AS 23.20.390(f). Mitchell v. State, 818 P.2d 1163 (Alaska Ct. App. 1991).

**Sec. 11.56.220. Proof of guilt.** In a prosecution for perjury or unsworn falsification it is not necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence. (§ 6 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Annotator's notes.** — The case cited in the notes below was decided under former AS 11.30.010.

**Required proof.** — To be guilty of perjury, it was necessary under former law to prove that a person under oath wilfully and falsely swore. Nelson v. State, 546 P.2d 592 (Alaska 1976).

**One could not be convicted of perjury on the uncorroborated testimony of one witness under former law.** Nelson v. State, 546 P.2d 592 (Alaska 1976).

**Testimony of perjury had to be corroborated by other evidence, either direct or circumstantial.**

Nelson v. State, 546 P.2d 592 (Alaska 1976).

**The purpose of such a rule was to prevent ill-founded retaliatory attacks by perjury prosecution upon a witness based on no more than the contrary oath of another.** Nelson v. State, 546 P.2d 592 (Alaska 1976).

**What was corroborative evidence.** — In order to be corroborative, evidence had to induce a rational belief that what the witness said was true. Nelson v. State, 546 P.2d 592 (Alaska 1976).

**Sufficiency of evidence.** — See Nelson v. State, 546 P.2d 592 (Alaska 1976).

**Sec. 11.56.230. Perjury by inconsistent statements.** (a) A person commits the crime of perjury by inconsistent statements if

- (1) in the course of one or more official proceedings the person makes two or more unsworn statements which are irreconcilably inconsistent to the degree that one of them is necessarily false;
- (2) the person does not believe one of the statements to be true at the time the statement is made; and
- (3) each statement is made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged.

(b) In a prosecution under this section, it is not necessary for the state to prove which statement was false but only that one or the other was false and not believed by the defendant to be true at the time the defendant made the statement. Proof of the irreconcilable inconsistency of the statements is prima facie evidence that one or the other of the statements was false.

(c) Perjury by inconsistent statements is a class C felony. (§ 6 ch 166 SLA 1978)

**Sec. 11.56.235. Retraction as a defense.** (a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement during the course of the same official proceeding; and (b) before discovery of the falsification became known to the defendant;

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 104(STA)  
 (S) Publish Date: 2/28/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Permanent Fund Dividend Fraud RDU Revenue Programs & Support  
 Component Permanent Fund Dividend  
 Sponsor Seekins  
 Requester \_\_\_\_\_ Component No. 981

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary	0	0	0	0	0	0

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

SB 104 defines misrepresentation of permanent fund dividend eligibility and authorizes a class C felony penalty for misrepresenting permanent fund eligibility. Current Title 11 provisions for forgery only cover the forging of financial instruments and therefore do not cover PFD application documents.

The bill also authorizes an investigation unit in the Department of Revenue to detect and investigate fraud in the permanent fund dividend program and to assist the Department of Law in the prosecution of such individuals. Although the department has administratively established an investigation unit, statutory designation is required for access to certain federal data bases (NCIC and NLETS). These data bases would facilitate more efficient and effective investigation of PFD crimes, especially those perpetrated by individuals living out of state.

Prepared by: Sharon Barton Phone 465-4785  
 Division Permanent Fund Dividend Date/Time 2/22/05 1:17 PM  
 Approved by: Tom Boutin Date 2/22/2005  
 Agency Department of Revenue

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 104(STA)  
 (S) Publish Date: 2/28/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act relating to the crime of misrepresenting RDU: CIVIL  
permanent fund eligibility..." Component: Commercial & Fair Business  
 Sponsor: Senator Searles Component No. \_\_\_\_\_  
 Requester: Senate State Affairs

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill would create a new statute in the criminal code making the crimes commonly associated with fraudulently applying for a permanent fund dividend a class C felony. Additionally, this bill would statutorily require the Department of Revenue to create a fraud investigation unit designed to detect and investigate permanent fund dividend crimes to aid in the prosecution of these offenses and the imposition of civil penalties. Currently Revenue has created a fraud investigation unit, but creating the unit in statute is necessary to facilitate access to information held by other law enforcement agencies. Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division: Administrative Services Division Date/Time 2/22/05 11:21 AM  
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/22/2005  
 Agency: Department of Law

**SB**

**105**

# SENATE COMMITTEE REPORT

DATE: 3/2/05

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 105

## SB 105 OVERTIME WAGES FOR FLIGHT CREW

"An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members; and providing for an effective date."

and recommends:

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

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

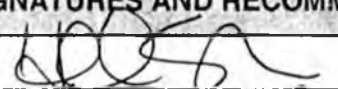
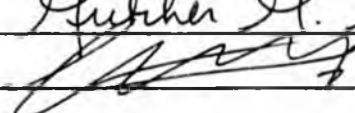
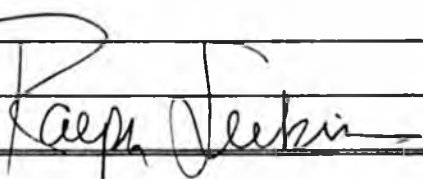
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			/	
Richard H. Jones			X	
	X			
CHAIR: 	X			

# ALASKA STATE SENATE

Session:  
State Capitol  
Juneau, Alaska 99801-1162  
(907) 465-2327  
(907) 465-5241 Fax



Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## Senate Bill 105 Sponsor Statement

**"An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members."**

Senate Bill 105 clarifies legislative intent by retroactively removing flight crews from the scope of statutory overtime compensation required under the Alaska Wage and Hour Act found in AS 23.10.060. Retroactivity will apply to work performed on or after January 1, 2000.

The challenges facing the air carrier industry nationwide are extraordinary. Heightened security requirements have necessitated ever larger investments in human and technological resources. Operating expenses continue to escalate as the price of fuel increases. These cost burdens place enormous pressures on already thin margins. The air carrier industry in our state is no different in this respect. Yet the role it plays in our daily lives is arguably much greater.

The Alaska air carrier industry represents a vital link, in fact a bond, between rural communities and hub cities. It provides a lifeline to healthcare facilities. It delivers the groceries and the mail. And it transports the basketball teams and the elders to important events across the state. But now, in addition to the burdens placed on the industry since 2001, we can add the cost of superfluous litigation which threatens the viability of many of our local carriers.

Up until 2003, it had been the Department of Labor's (DOL) uncodified policy that in-state air carriers are exempt from the Alaska Wage and Hour Act's (AWHA) overtime provisions. This policy was rooted in a 1980 Alaska Attorney General opinion. This opinion cited both the federal Railway Labor Act and the U.S. Constitution's Commerce Clause as preempting flight crews from overtime compensation provided through the AWHA.

However, in 2000 uncertainty crept into the DOL's policy as a result of a lawsuit which sought overtime compensation for pilots. By 2003, three class action suits were outstanding representing millions of dollars in claims against Alaska air carriers. Consequently, state lawmakers took action to avoid what could be devastating losses to a critical yet fragile industry.

The 23<sup>rd</sup> Legislature passed into law a bill (SB 54) that codified what, up to that point, had been DOL policy exempting flight crews from the AWHA overtime compensation rules. While the bill did accomplish this important purpose, it failed to fully enact the legislative intent necessary to deflect court actions seeking recovery for periods dating back to the year 2000.

Senate Bill 105 seeks to fulfill the intent of the 23<sup>rd</sup> Legislature by implementing the provisions found in AS 23.10.060(d)(19) retroactively to January 1, 2000. This will help ensure the viability of our air carrier industry so that it may continue to perform its vital public function.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 105(L&C)  
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to the retrospective application of the overtime compensation exemption for flight crew..." RDU CIVIL  
 Component Labor & State Affairs  
 Sponsor Senator Seekins  
 Requester Senate Labor & Commerce Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill adds a new section in statute applying the overtime compensation exemption for flight crew members set forth in AS 23.20.060 (d)(19) retroactive to work performed on or after January 1, 2000. Any unresolved claims for overtime compensation for employment as a flight crew member on or after January 1, 2000 would fall under this new provision.

Passage of this legislation would have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division: Administrative Services Division Date/Time 2/20/05 12:44 PM  
 Approved by: Kathryn Daughhete for Scott Nordstrand, Acting AG Date 2/20/2005  
 Agency: Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 105(L&C)  
 (S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: Overtime Wages for Flight Crew RDU: Labor Standards and Safety  
 Component: Wage and Hour  
 Sponsor: Senator Seekins  
 Requester: Senate L&C Component Number: 345

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: None  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill retroactively applies an exemption to the requirement to pay overtime compensation to flight crew members. There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855  
 Division: Labor Standards and Safety Date/Time: 2/18/05 9:01 AM  
 Approved by: Greg O'Claray, Commissioner Date: 2/18/2005  
 Agency: Department of Labor and Workforce Development



# LAWS OF ALASKA

2003

Source

SB 54

Chapter No.

\_\_\_\_\_

## AN ACT

Exempting flight crew members of certain air carriers from overtime pay requirements.

\_\_\_\_\_

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Exempting flight crew members of certain air carriers from overtime pay requirements.

2

3 \* Section 1. AS 23.10.060(d) is amended by adding a new paragraph to read:

4 (19) work performed by a flight crew member employed by an air  
5 carrier subject to 45 U.S.C. 181 - 188 (subchapter II of the Railway Labor Act); in this  
6 paragraph, "flight crew" means the pilot, co-pilot, flight engineer, and flight  
7 attendants.

**Testimony of Thomas M. Daniel**  
**Senate Labor & Commerce Committee Hearing**  
**Re Senate Bill 105**

**(February 22, 2005)**

Mr. Chairman and members of the Committee. My name is Tom Daniel. I am a partner with the law firm of Perkins Coie in Anchorage, where my practice is devoted primarily to employment law. I am here today to testify in favor of Senate Bill 105, which would make retroactive the law which the Legislature passed in 2003, making pilots exempt from overtime.

In my practice I have handled numerous cases involving overtime claims arising under both federal and Alaska law. Currently, I am defending Hageland Aviation Services in a class action lawsuit asserting overtime for pilots, which goes on despite the exemption for pilots passed by the Legislature in 2003. The lawsuit continues because the judge ruled that the law only applied after the effective date of the Act – but not to claims for overtime that arose before 2003.

I support Senate Bill 105 because it will make clear that the overtime exemption for pilots which the Legislature passed in 2003 was intended to apply to pending lawsuits. But first, let me provide a little background.

Since 1949, pilots of airlines governed by the Railway Labor Act have been exempt from the overtime provisions of the federal overtime law (the Fair Labor Standards Act). (This includes all air carriers engaged in interstate or foreign commerce or that transport U.S. mail, as well as air freight forwarders owned or controlled by such carriers.)

Until 2003, there was no similar exemption under the Alaska overtime law, the Alaska Wage and Hour Act. However, in 1980, the Alaska Attorney General issued an opinion concerning whether air carriers operating in the state of Alaska were subject to the state overtime law. *He concluded that the flight crews of interstate carriers were not subject to the state overtime law.* Exhibit 1.

Based on the Attorney General's opinion, the Alaska Department of Labor consistently has taken the position that pilots of interstate air carriers, including in-state carriers that haul U.S. mail, are exempt from the state overtime law. In 1986, the Department sent an opinion letter to the Alaska Air Carriers Association, in which it stated that state overtime law did not apply to pilots of commuter aircraft and air taxi pilots if they were involved in "interstate transportation of passengers and/or