Title 12. Code of Criminal Procedure.

Chapter 05. Jurisdiction.

Sec. 12.05.010. Crime commenced outside state but consummated inside.
When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant.

Sec. 12.05.020. Offenses committed on aircraft or ferries and other watercraft owned or operated by the state.
A person may be prosecuted under the laws of this state for an offense committed on or against an aircraft owned or operated by the state or a ferry or other watercraft owned or operated by the state, even if the aircraft, ferry, or watercraft is in airspace or water outside the state when the offense is alleged to have occurred. This jurisdiction is in addition to that provided by AS 44.03 and any other jurisdictional basis expressed or implied in law.

Sec. 12.05.030. Crimes involving minors committed outside state.
In addition to any other jurisdictional basis expressed or implied in law, a person may be prosecuted under the laws of this state for conduct occurring outside the state for a violation of

(1) AS 11.41.452 if the other person with whom the defendant communicated was in the state; or

(2) AS 11.61.116 if the minor whose image is published or distributed was in the state.

Chapter 10. Limitations of Actions.

Sec. 12.10.010. General time limitations.
(a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering the prosecution of murder;

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a violation of AS 11.41.425(a)(2) — (4);

(5) a violation of AS 11.41.425, 11.41.427, 11.41.450 — 11.41.458, AS 11.66.110 — 11.66.130, or former AS 11.41.430, when committed against a person who, at the time of the offense, was under 18 years of age;

(6) kidnapping;

(7) distribution of child sexual abuse material in violation of AS 11.61.125;

(8) sex trafficking in violation of AS 11.66.110 — 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) human trafficking in violation of AS 11.41.360 or 11.41.365.

(b) Except as otherwise provided by law or in (a) of this section, a person may not be prosecuted, tried, or punished for an offense unless the indictment is found or the information or complaint is instituted not later than

(1) 10 years after the commission of a felony offense in violation of AS 11.41.120 — 11.41.330, 11.41.425(a)(1), 11.41.425(a)(5), 11.41.425(a)(6), or 11.41.450 — 11.41.458; or

(2) five years after the commission of any other offense.

Sec. 12.10.020. Specific time limitation.

(a) Even if the general time limitation has expired, a prosecution for any offense that includes a material element of fraud or breach of fiduciary obligation may be commenced within one year after the discovery of the offense by an aggrieved party or by a person who has legal capacity to represent an aggrieved party or a legal duty to report the offense and who is not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) Even if the general time limitation has expired, a prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced within one year after discovery of the offense by a person having a duty to report such offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(c) [Repealed, § 3 ch 86 SLA 2001.]

Sec. 12.10.030. When period of limitation runs.

(a) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution is commenced either when an indictment is found or when a warrant is issued, provided that such warrant is executed without unreasonable delay.

Sec. 12.10.040. When period of limitation does not run.

(a) The period of limitation does not run during any time when the accused, with a purpose to avoid detection, apprehension, or prosecution, is outside the state or is absent from the accused's

usual place of abode within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this state.

Chapter 15. Parties.

Secs. 12.15.010 — 12.15.040. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.16.]

Chapter 20. Bars to Actions.

Sec. 12.20.010. Conviction or acquittal elsewhere as bar. [Repealed, § 40 ch 75 SLA 2008.]

Sec. 12.20.020. When acquittal or dismissal is not a bar.
If the defendant is acquitted on the ground of a variance between the charge and the proof, or the charge is dismissed upon an objection to its form or substance, or discharged for want of prosecution, without a judgment of acquittal or in bar of another prosecution, it is not an acquittal of the crime and does not bar a subsequent prosecution for the same crime.

Sec. 12.20.030. When acquittal is a bar.
When the defendant is acquitted on the merits, the defendant is acquitted of the same crime, notwithstanding any defect in form or substance in the charge, information, or complaint on which the trial was had.

Sec. 12.20.040. When conviction or acquittal is a bar to other offenses.
When the defendant is convicted or acquitted of a crime consisting of different degrees, the conviction or acquittal is a bar to another prosecution for the crime charged in the former or for any inferior degree of that crime, or for an attempt to commit that crime, or for an offense necessarily included in the crime of which the defendant might have been convicted under the information, indictment, or complaint.

Sec. 12.20.050. Dismissal as bar.
(a) It is a bar to another prosecution for the same crime if the crime is a misdemeanor, but it is not a bar if the crime charged is a felony when a person is

(1) held to answer to the grand jury and the court dismisses the charge before the case is presented to the grand jury upon the motion of the prosecuting attorney;

(2) held to answer to the grand jury and the court dismisses the charge because the indictment is not found against the person at the next session of the grand jury; or

(3) indicted for a crime and the indictment is dismissed because the trial is not held within a reasonable period of time, there is not good cause shown for the delay, and the delay was not upon the application of the defendant or with the defendant's consent.

(b) Unless the court directs a judgment of acquittal to be entered, it is not a bar to another action for the same crime if the court orders an indictment to be discharged because the prosecuting attorney is not prepared to go to trial when the indictment is called for trial and does not show sufficient cause for postponing the trial.

Sec. 12.20.060. Discharge of codefendant as bar.
It is an acquittal of the defendant discharged and a bar to another prosecution for the same crime when two or more persons are charged in the same indictment, and the court dismisses the indictment against a defendant

(1) before that defendant has begun to present a defense and on the application of the prosecuting attorney so that the defendant may be a witness for the state; or

(2) before the evidence is closed and on the application of another defendant on trial so that the discharged defendant may be a witness for a codefendant, and when, in the opinion of the court, there is not sufficient evidence to require the discharged defendant to present a defense.

Chapter 25. Arrests and Citations.

Article 1. Arrests.
Sec. 12.25.010. Persons authorized to arrest.
An arrest may be made by a peace officer or by a private person.

Sec. 12.25.020. Judge or magistrate may order arrest.
When a crime is committed in the presence of a judge or magistrate, the judge or magistrate may, by an oral or written order, command any person to arrest the offender, and may immediately proceed as though the offender had been brought before the court on a warrant of arrest.

Sec. 12.25.030. Grounds for arrest by private person or peace officer without warrant.
(a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in the presence of the person making the arrest;

(2) when the person has committed a felony, although not in the presence of the person making the arrest;

(3) when a felony has in fact been committed, and the person making the arrest has reasonable cause for believing the person to have committed it.

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, “crime involving domestic violence” has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in violation of AS 11.56.740; or

(C) violated a condition of release imposed under AS 12.30.016(e) or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has probable cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under 18 years of age and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian;

(C) violated conditions imposed as part of the person's release under the provisions of AS 12.30; or

(D) violated AS 11.41.230 at a health care facility, and the person

(i) was not seeking medical treatment at the facility; or

(ii) was stable for discharge.

(c) [Repealed, § 16 ch 61 SLA 1982.]
(d) [Repealed, § 72 ch 64 SLA 1996.]
(e) In this section, "health care facility" has the meaning given in AS 18.07.111.

Sec. 12.25.031. Alternative to arrest.

(a) As an alternative to arrest, a peace officer may, at the officer's discretion, deliver a person to a crisis stabilization center, a crisis residential center, or an evaluation facility or decline to arrest the person if

(1) the arresting officer believes in good faith that the person is suffering from an acute behavioral health crisis; and

(2) the person voluntarily agrees to be taken to a crisis stabilization center, a crisis residential center, or an evaluation facility or to promptly seek outpatient mental health treatment.

(b) Notwithstanding (a) of this section, a peace officer may, as an alternative to arrest, take a person into emergency custody under AS 47.30.705 and deliver the person to a crisis stabilization center, a crisis residential center, or an evaluation facility.

(c) Delivery of a person to a crisis stabilization center, a crisis residential center, or an evaluation facility for examination under (a) of this section does not constitute an involuntary commitment under AS 47.30 or an arrest.

(d) Before a person delivered to a crisis stabilization center, a crisis residential center, or an evaluation facility under (a) or (b) of this section is released to the community, a mental health professional shall make reasonable efforts to inform the arresting officer and the arresting officer's employing agency of the planned release if the officer has specifically requested notification and provided the officer's contact information to the crisis stabilization center, crisis residential center, or evaluation facility.

(e) A peace officer is not liable for civil damages arising from an act or omission done with reasonable care and in good faith under this section.

(f) An agreement to participate in outpatient treatment or to be delivered to a crisis stabilization center, a crisis residential center, or an evaluation facility under (a) of this section

(1) may not require a person to stipulate to any facts regarding the alleged criminal activity as a prerequisite to participation in a mental health treatment alternative;

(2) is inadmissible in any criminal or civil proceeding; and

(3) does not create immunity from prosecution for the alleged criminal activity.

(g) If a person violates an agreement to be delivered to a crisis stabilization center, a crisis residential center, or an evaluation facility or to seek outpatient treatment under (a) of this section,

(1) a mental health professional shall make reasonable efforts to inform the arresting officer and the arresting officer's employing agency of the person's decision to leave the crisis stabilization center, crisis residential center, or evaluation facility; and

(2) the original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed as provided by law.

(h) Notwithstanding the other provisions of this section, charges may be filed or referred to the prosecutor, as appropriate, at any time in accordance with law.

(i) In this section,

(1) “crisis residential center” has the meaning given in AS 47.32.900;

(2) “crisis stabilization center” has the meaning given in AS 47.32.900;

(3) “evaluation facility” has the meaning given in AS 47.30.915;

(4) “mental health professional” has the meaning given in AS 47.30.915.

Sec. 12.25.033. Arrest without warrant for operating vehicle while under the influence of an alcoholic beverage, inhalant, or controlled substance.

A peace officer may arrest a person without a warrant, whether or not the offense is committed in the presence of the officer, when the officer has probable cause to believe that the person to be arrested has committed the crime of operating a motor vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a similar city or borough ordinance, if the violation is alleged to have occurred less than eight hours before the time of arrest.

Sec. 12.25.035. Arrest without warrant by state trooper when judicial officer is unavailable.

A state trooper may arrest a person without a warrant for a misdemeanor or for the violation of an ordinance when

(1) the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor or has violated an ordinance;

(2) personal or property damage is likely to be done unless the person is immediately arrested;

and

(3) there is no known judicial officer empowered to issue a warrant within a radius of 25 miles of the person to be apprehended.

Sec. 12.25.040. Taking before judge or magistrate person arrested by bystander.
A peace officer may, without warrant, take before a judge or magistrate a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to the peace officer.

Sec. 12.25.050. Method of making arrest.
An arrest is made by the actual restraint of a person or by a person's submission to the custody of the person making the arrest.

Sec. 12.25.060. Method of arrest by officer without warrant.
When making an arrest without a warrant, the peace officer shall inform the person to be arrested of the officer's authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of a crime, or is pursued immediately after its commission or after an escape.

Sec. 12.25.070. Limitation on restraint in arrest.
A peace officer or private person may not subject a person arrested to greater restraint than is necessary and proper for the arrest and detention of the person.

Sec. 12.25.080. Means to effect resisted arrest. [Repealed, § 21 ch 59 SLA 1982. For present provisions, see AS 11.81.370 — 11.81.390.]
Sec. 12.25.090. Peace officer's authority to summon aid to make arrest.
A peace officer making an arrest may orally summon as many persons as the officer considers necessary to aid in making the arrest. A person when required by an officer shall aid in making the arrest.

Sec. 12.25.100. Breaking into building or vessel to effect arrest.
A peace officer may break into a building or vessel in which the person to be arrested is or is believed to be, if the officer is refused admittance after the officer has announced the authority and purpose of the entry.

Sec. 12.25.110. Breaking open building or vessel to liberate.
A peace officer may break open a building or vessel to liberate a person who entered to make an arrest and is detained, or to liberate oneself when necessary.

Sec. 12.25.120. Retaking escaped prisoner.
If a person arrested escapes or is rescued, the person from whose custody that person escaped or was rescued may immediately pursue and retake that person at any time and in any place in the state.

Sec. 12.25.130. Means usable to retake prisoner. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.81.370 — 11.81.390.]

Sec. 12.25.140. Property taken from defendant on arrest.

When money or other property is taken from a person arrested upon a charge of a crime, the officer taking it shall immediately make duplicate receipts for the property, specifying particularly the amount of money or kind of property taken. The officer shall deliver one receipt to the person arrested and the other to the judge or magistrate who examines the charge or, if the arrest is after the information or indictment, to the clerk of the court where the action is pending.

Sec. 12.25.150. Rights of prisoner after arrest.

(a) A person arrested shall be taken before a judge or magistrate without unnecessary delay and in any event within 24 hours after arrest, absent compelling circumstances, including Sundays and holidays. The unavailability of a report prepared by the pretrial services officer under AS 33.07 or a delay in the transmittal of that report to the parties or to the court may not be considered a sufficient compelling circumstance to justify delaying a hearing beyond 24 hours. The hearing before the judge or magistrate may not take place more than 48 hours after arrest. This requirement applies to municipal police officers to the same extent as it does to state troopers.

(b) Immediately after an arrest, a prisoner shall have the right to telephone or otherwise communicate with the prisoner's attorney and any relative or friend, and any attorney at law entitled to practice in the courts of Alaska shall, at the request of the prisoner or any relative or friend of the prisoner, have the right to immediately visit the person arrested. This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.

(c) It shall be unlawful for an officer having custody of a person so arrested to wilfully refuse or neglect to grant the prisoner the rights provided by this section. A violation of this section is a misdemeanor, and, upon conviction, the offender is punishable by a fine of not more than $100, or by imprisonment for not more than 30 days, or by both.

(d) In addition to the criminal liability in (c) of this section, an officer having a prisoner in custody who refuses to allow an attorney to visit the prisoner when proper application is made therefor shall forfeit and pay to the party aggrieved the sum of $500, recoverable in a court of competent jurisdiction.

Sec. 12.25.160. Definition of “arrest”

Arrest is the taking of a person into custody in order that the person may be held to answer for the commission of a crime.

Article 2. Citations.

Sec. 12.25.175. Uniform citation format and procedure.

(a) Notwithstanding any contrary provision of law, a citation issued by a peace officer or by another person who is authorized by law to issue a citation in the state must comply with standards concerning uniform citation format and procedure adopted by the Department of Public Safety. The standards must include

(1) a statewide numbering system for citations;

(2) a requirement that a citation be made upon oath or affirmation before a person authorized by law to administer oaths or affirmations or signed with a certification under penalty of perjury that the citation is true and was personally served on the person charged or served in a manner permitted under (d) of this section;

(3) a requirement that the citation contain information required by AS 12.25.200(b).

(b) The commissioner of public safety shall provide or prescribe citation forms for use by peace officers and other persons who are authorized by law to issue citations.

(c) The commissioner of public safety shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section.

(d) The standards adopted by the department under (a) of this section must allow for service of a citation by other than personal service when the citation is for commission of an infraction or a violation for an offense other than an offense under AS 04.16.050 or an offense involving a moving motor vehicle, the offense is punishable by a fine of $500 or less, and the peace officer or other person authorized by law to issue the citation

(1) leaves the citation in a conspicuous place on the vehicle or other personal or real property that was the subject of the infraction or violation; or

(2) serves the citation in a manner permitted for service of process under Rule 4, Alaska Rules of Civil Procedure.

Sec. 12.25.180. When peace officer may issue citation or take person before the court.

(a) When a peace officer stops or contacts a person for the commission of a class C felony offense, a misdemeanor, or the violation of a municipal ordinance, the officer may, in the officer's discretion, issue a citation to the person instead of taking the person before a judge or magistrate under AS 12.25.150, except the officer may arrest if

(1) the person does not furnish satisfactory evidence of identity;

(2) the peace officer reasonably believes the person is a danger to others;

(3) the crime for which the person is contacted is one involving violence or harm to another person or to property;

(4) the person asks to be taken before a judge or magistrate under AS 12.25.150; or

(5) the peace officer has probable cause to believe the person committed a crime involving domestic violence; in this paragraph, “crime involving domestic violence” has the meaning given in AS 18.66.990.

(b) When a peace officer stops or contacts a person for the commission of an infraction or a violation, the officer shall issue a citation instead of taking the person before a judge or magistrate under AS 12.25.150, except the officer may arrest if

(1) the person does not furnish satisfactory evidence of identity;

(2) the person refuses to accept service of the citation.

(3) [Repealed, § 138 ch 4 FSSLA 2019.]

(c) A person may not bring a civil action for damages for a failure to comply with the provisions

of this section.

Sec. 12.25.190. When person to be given five-day notice to appear in court.
(a) When a person is contacted by a peace officer and the peace officer exercises one of the options provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.

(b) The time specified in the notice to appear shall be at least two working days after the issuance of the citation under AS 12.25.180(a).

(c) The person cited shall accept at least one copy of the written citation prepared by the peace officer.

(d) The time specified in the notice to appear shall be at least five working days after issuance of the citation under AS 12.25.180(b).

Sec. 12.25.195. Disposition of scheduled offenses.
(a) If a person cited for an offense for which a scheduled amount of bail or a fine has been established does not contest the citation, the person may mail or personally deliver to the clerk of the court with appropriate jurisdiction if a bailable offense, or to the clerk of the municipality that issued the citation if a scheduled municipal fine, the amount of the bail or fine indicated on the citation for the offense together with a copy of the citation signed by the person indicating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of bail or fine. The citation with the bail or fine shall be mailed or personally delivered on or before the 30th day after the date the citation was issued.

(b) When bail or a fine is forfeited under this section, a judgment of conviction shall be entered. The bail or fine paid is complete satisfaction for the offense.

(c) Disposition of an offense under (a) of this section may not occur unless the person cited for the offense pays the surcharge prescribed in AS 12.55.039 in addition to the scheduled bail or fine amount. The surcharge required to be paid under this subsection shall be deposited into the general fund and accounted for under AS 37.05.142.

Sec. 12.25.200. Form for citations.
(a) The chief administrative officer of each law enforcement agency or other agency authorized to issue citations in the state is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it and shall require and retain a receipt for every book issued to a peace officer or other person authorized to issue citations.

(b) A citation issued under AS 12.25.180 or other law authorizing the issuance of a citation must be in writing and indicate, if applicable,
(1) the amount of bail or fine and the surcharge applicable to the offense;

(2) the procedure a person must follow in responding to the citation;

(3) that, if the person fails to pay the bail or fine, the person must appear in court;

(4) that failure to pay the bail or fine or appear in court for an offense involving a moving motor vehicle may result in

(A) suspension of the person's driver's license, privilege to drive, or privilege to obtain a license; or

(B) attachment of the person's permanent fund dividend to pay the fine plus court and collection costs under AS 28.05.155; and

(5) that the person has a right to

(A) a trial;

(B) engage counsel;

(C) confront and question witnesses;

(D) testify;

(E) subpoena witnesses on the person's behalf.

Sec. 12.25.210. Disposition and records of citations.

(a) A peace officer or other person authorized by law to issue a citation, upon issuing a citation to an alleged violator under AS 12.25.180 or other law, on or before the 10th working day after issuance, shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. If the citation charges an offense under a municipal ordinance for which a scheduled fine has been established, the peace officer shall deposit the original or a copy of the citation with the clerk of the municipality that issued the citation, unless otherwise provided under rule adopted by the supreme court. Failure to file the citation within the prescribed time is not a basis for dismissal of the citation.

(b) Upon the deposit of the original or a copy of the citation with a court having jurisdiction over the alleged offense, the original or copy of the citation may be disposed of only by trial in the court or other official action by a magistrate or judge of the court.

(c) It is unlawful and official misconduct for a peace officer or other officer or public employee to dispose of a citation or copies of it or of the record of the issuance of the citation in a manner other than as required in this section.

(d) The chief administrative officer of each law enforcement or other agency shall require each officer or other person in the agency to retain a copy of every citation issued by the officer or other person to an alleged violator of a law or ordinance and all copies of every citation that has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) The chief administrative officer of each law enforcement or other agency shall also maintain, in connection with every citation issued by an officer or other person in the agency, a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

Sec. 12.25.220. When copy of citation considered a lawful complaint.
If the form of citation provided under AS 12.25.200 includes information and is sworn to as required under the laws of this state in respect to a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution.

Sec. 12.25.230. Failure to obey citation; limitation on penalty.
(a) Except as provided in (b) of this section or otherwise specifically provided by law, a person who fails to appear in court to answer the citation, regardless of the disposition of the charge for which the citation was issued, is guilty of a class A misdemeanor.

(b) A person who fails to pay the bail or fine or appear in court in response to a citation for which a scheduled bail or fine is established, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

(c) If a person cited for an offense for which an amount of scheduled bail or fine has been established appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail or fine established for the offense.

Chapter 30. Bail.

Sec. 12.30.006. Release procedures.
(a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011 would not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community, if the person has
(1) been charged with an unclassified, class A, class B, or class C felony; or

(2) a criminal conviction or charge outside the state.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless
(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement

must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, “new information” includes the person's inability to post the required bail if the person can show that the person made a good faith effort to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 hours' written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review; however, a person may receive only one bail review hearing solely for inability to pay.

(e) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(f) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer or a pretrial services officer under AS 33.07 may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(g) Information offered or introduced at a bail hearing to determine conditions of release need not conform to the rules governing the admissibility of evidence.

Sec. 12.30.010. Bail before or after conviction; restrictions on release without bail. [Repealed, § 30 ch 19 SLA 2010.]

Sec. 12.30.011. Release before trial.

(a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably ensure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment or, if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the prosecuting authority within two business days after any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to submit to electronic monitoring;

(18) order the person to submit to a pretrial risk assessment by the Department of Corrections under AS 33.07;

(19) order the person to submit to supervision by a pretrial services officer under AS 33.07, which may include the use of electronic monitoring;

(20) order the person to comply with any other condition that is reasonably necessary to ensure the appearance of the person and to ensure the safety of the victim, other persons, and the community; and

(21) require the person to comply with a program established under AS 47.38.020 if the person has been charged with an alcohol-related or substance-abuse-related offense that is an unclassified felony, a class A felony, a sexual felony, or a crime involving domestic violence.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions and any pending criminal charges;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community; and

(12) the pretrial risk assessment provided by a pretrial services officer, if available.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that there is a substantial risk that the person will not appear and the person poses a danger to the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, a sexual felony, or a felony under AS 28.35.030 or 28.35.032;

(B) charged with a felony crime against a person under AS 11.41, was previously convicted of a felony crime against a person under AS 11.41 in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) charged with a felony offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

(e) If the supreme court establishes a schedule of bail amounts or conditions of release for misdemeanor offenses, the schedule must include a condition providing that a correctional facility shall, at the time of release, conduct a chemical test of the breath of a person who has been arrested and who is intoxicated and shall detain the person until the test result indicates that the person's breath has less than 0.08 grams of alcohol for each 210 liters of breath or, with the consent of the person, release the person to another person who is willing and able to provide care for the person.

Sec. 12.30.016. Release before trial in certain cases.

(a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011, conditions of release for offenses described in this section, if necessary to reasonably assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may order the person

(1) to refrain from

(A) consuming alcoholic beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer or pretrial services officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) to submit to a breath test when requested by a law enforcement officer or pretrial services officer;

(4) to provide a sample for a urinalysis or blood test when requested by a law enforcement officer or pretrial services officer;

(5) to take a drug or combination of drugs intended to prevent substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028;

(7) to comply with a program established under AS 47.38.020.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer or pretrial services

officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, with testing to occur not less than once a week, or to submit to random drug testing by the pretrial services office in the Department of Corrections to detect the presence of a controlled substance, with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present at, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area;

(6) to refrain from the use or possession of an inhalant; or

(7) to comply with a program established under AS 47.38.020.

(d) [Repealed, § 179 ch 36 SLA 2016.]

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting, in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior;

(4) participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

(f) In a prosecution charging a crime under AS 11.41.410 — 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and the parent or guardian of a minor victim have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim or a parent or guardian of the minor victim who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

Sec. 12.30.020. Release before trial. [Repealed, § 30 ch 19 SLA 2010.]
Sec. 12.30.021. Third-party custodians.
(a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably ensure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) personally, by telephone, or by other technology approved by the court, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian's being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been unconditionally discharged within the previous five years from a felony, a crime under AS 11.41, or a similar crime in this or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state; however, a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.

Secs. 12.30.023 , 12.30.025. Release before trial in cases involving controlled substances or alcohol; release before trial in cases involving stalking. [Repealed, § 30 ch 19 SLA 2010.]
Sec. 12.30.027. Release in domestic violence cases.
(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably ensure the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011;

(2) may impose any of the conditions authorized under AS 12.30.011;

(3) may impose any of the provisions of AS 18.66.100(c)(1) — (7) and (11);

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

(b) A judicial officer may not order or permit a person released under (a) of this section to return to the residence or place of employment of the victim or the residence or place of employment of a petitioner who has a protective order directed to the person and issued, filed, or recognized under AS 18.66.100 — 18.66.180 unless

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence or place of employment;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence or place of employment does not pose a danger to the victim or petitioner.

(c) If the court imposes conditions of release under (a) of this section, it shall

(1) issue a written order specifying the conditions of release;

(2) provide a copy of the order to the person arrested or charged; and

(3) immediately distribute a copy of the order to the law enforcement agency that arrested the person.

(d) When a person is released from custody under (a) of this section,

(1) from a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release;

(2) from other than a correctional facility, the arresting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

(e) A person arrested for a crime involving domestic violence or for violation of a condition of release in connection with a crime involving domestic violence may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.

(f) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

(g) [Repealed, § 30 ch 19 SLA 2010.]

Sec. 12.30.029. Release in sexual abuse and sexual assault cases. [Repealed, § 30 ch 19 SLA 2010.]

Sec. 12.30.030. Appeal from conditions of release.

(a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

Sec. 12.30.031. Temporary release.

(a) A person, either before trial or after conviction, who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

Sec. 12.30.035. Release pending appeal by state.

If the state appeals an order dismissing an indictment, information, or complaint, or granting a new trial after verdict or judgment, the court shall treat the defendant in accordance with the provisions governing pretrial release under this chapter.

Sec. 12.30.040. Release before sentence; release after conviction.

(a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction; or

(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

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

Sec. 12.30.050. Release of material witnesses.

(a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

Sec. 12.30.055. Persons appearing on petition to revoke.

(a) A person who is in custody in connection with a petition to revoke probation for a felony crime against a person under AS 11.41 does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if it is established by a preponderance of the evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) [Repealed, § 138 ch 4 FSSLA 2019.]

Sec. 12.30.060. Penalties for failure to appear. [Repealed, § 30 ch 19 SLA 2010.]
Sec. 12.30.070. Contempt.
Nothing in this chapter shall prevent a court from exercising its power to punish for contempt.

Sec. 12.30.075. Forfeited cash and other securities.
(a) Cash or other security posted by a person under AS 12.30.011 that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the person is convicted.

(b) If a restitution order is not entered, the court shall order the cash or other security being held in trust to be forfeited to the state.

(c) If a restitution order is entered, the court shall apply the cash or other security to the satisfaction of the order. If the cash or other security held in trust is applied to an order of restitution, the court shall issue a separate judgment against the defendant in favor of the state in the amount that would have otherwise been forfeited, and any cash or other security remaining after payment of the restitution shall be applied against that judgment. Any cash or other security remaining shall be forfeited to the state.

Sec. 12.30.078. Conviction occurrence.
In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

Sec. 12.30.080. Definitions.
In this chapter,
(1) “crime involving domestic violence” has the meaning given in AS 18.66.990;

(2) “judicial officer” means a person authorized to release a person pending trial, sentencing, or pending appeal;

(3) “knowingly” has the meaning given in AS 11.81.900;

(4) “offense” means any criminal offense;

(5) “peace officer” has the meaning given in AS 11.81.900;

(6) “sexual felony” has the meaning given in AS 12.55.185;

(7) “stalking” means a violation of AS 11.41.260 or 11.41.270.

Chapter 35. Search and Seizure.

Sec. 12.35.010. Issuance of search warrant; extraterritorial jurisdiction.
(a) A judicial officer may issue a search warrant upon a showing of probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the thing to be seized. The court may issue a search warrant for a place or property located either in the state or outside the state.

(b) A judicial officer may issue a search warrant upon the sworn oral testimony of a person communicated by telephone or other appropriate means, or sworn affidavit submitted by facsimile machine, in accordance with AS 12.35.015.

Sec. 12.35.015. Issuance of search warrant upon testimony communicated by telephone or other means.
(a) A judicial officer may issue a search warrant upon the sworn oral testimony of a person communicated by telephone or other appropriate means, or sworn affidavit transmitted by facsimile machine.

(b) A judicial officer shall place under oath each person whose oral testimony forms a basis of the application and each person applying for the search warrant. The judicial officer shall record the proceeding by using a voice recording device.

(c) If a facsimile search warrant cannot be transmitted to the applicant under (g) of this section, the applicant shall prepare a document to be known as a duplicate original warrant and shall read it verbatim to the judicial officer. The judicial officer shall enter, verbatim, on an original search warrant what is read to the judicial officer. The judicial officer may direct that the duplicate original search warrant be modified.

(d) Except as provided in (g) of this section, if a search warrant is issued under this section, the judicial officer shall orally authorize the applicant to sign the judicial officer's name on the duplicate original search warrant. The judicial officer shall immediately sign the original search warrant and enter on the face of the original search warrant the exact time when the search warrant was ordered to be issued.

(e) The person who executes a search warrant issued under this section shall enter the exact time of execution on the face of the facsimile search warrant issued under (g) of this section or the duplicate original search warrant.

(f) [Repealed, § 39 ch 75 SLA 2008.]
(g) A search warrant issued by a judicial officer may be transmitted by facsimile machine to the applicant. The facsimile search warrant shall serve as an original.

Sec. 12.35.020. Grounds for issuance.
A search warrant may be issued if the judicial officer reasonably believes any of the following:
(1) that the property was stolen or embezzled;

(2) that the property was used as a means of committing a crime;

(3) that the property is in the possession of a person who intends to use it as the means of committing a crime, or in possession of another to whom the person may have delivered it for the purpose of concealing it or preventing its being discovered;

(4) that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime;

(5) that either reasonable legislative or administrative standards for conducting a routine or area inspection with regard to air pollution are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

Sec. 12.35.025. Seizure of property.

(a) Property described in AS 12.35.020 may be taken on a warrant from

(1) a house or other place in which it is concealed or may be found;

(2) the possession of the person by whom it was stolen, embezzled, or used in the commission of a crime;

(3) a person who is in possession of the property;

(4) the possession of a person to whom the property has been delivered for the purpose of concealing it or preventing its being discovered, or from a house or other place occupied by that person or under that person's control.

(b) When property is seized under this chapter, the peace officer taking the property shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavit, and a receipt for the property taken, or shall leave the copies and the receipt at the place from which the property was taken.

(c) The return of the warrant to the court shall be made promptly and shall be accompanied by a written inventory of the property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one other person as a witness.

(d) The inventory required by (c) of this section shall be signed by the peace officer under penalty of perjury under AS 09.63.020. The judge or magistrate shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Sec. 12.35.030. Showing of probable cause. [Repealed, § 16 ch 69 SLA 1970.]

Sec. 12.35.040. Authority of officer executing warrant.

In the execution or service of a search warrant, the officer has the same power and authority in all respects to break open any door or window, to use the necessary and proper means to overcome forcible resistance made to the officer, or to call any other person to the officer's aid as the officer has in the execution or service of a warrant of arrest.

Sec. 12.35.050. Disposition of property taken. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.36.]
For present provisions, see AS 12.36.

For present provisions, see AS 12.36.

Sec. 12.35.060. Malicious procurement of search warrant.
A person who maliciously and without probable cause causes a search warrant to be issued and executed is guilty of a misdemeanor.

Sec. 12.35.070. Search of defendant in presence of judge or magistrate.
When a person charged with a crime is believed by the judge or magistrate before whom that person is brought to have on the person a dangerous weapon, or anything that may be used as evidence of the commission of the crime, the judge or magistrate may direct the accused to be searched in the presence of the judge or magistrate, and the weapon or other thing be retained subject to the order of the judge or magistrate or the order of the court in which the defendant may be tried.

Secs. 12.35.080 — 12.35.110. Disposition of stolen property. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.36.]
For present provisions, see AS 12.36.

For present provisions, see AS 12.36.

Sec. 12.35.120. Definition of search warrant.
A search warrant is an order in writing, signed by a judge or magistrate or signed at the direction of a judicial officer in accordance with AS 12.35.015, directed to a peace officer, commanding the peace officer to search for personal property and bring it before the judge or magistrate.

Chapter 36. Disposition of Recovered or Seized Property; Preservation of Evidence.

Article 1. Property Disposition.
Sec. 12.36.010. Property disposition.
When property not belonging to a law enforcement agency comes into the custody of the agency, the property shall be disposed of in accordance with this chapter.

Sec. 12.36.020. Return of property.
(a) A law enforcement agency may
(1) not return property in its custody to the owner or the agent of the owner, except as provided in AS 12.36.200, if
(A) the property is in custody in connection with a children's court proceeding, a criminal proceeding, or an official investigation of a crime; or

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

(i) state; or

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

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

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

(B) is

(i) not needed as evidence; or

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

(b) In a criminal proceeding or a children's court proceeding involving the wrongful taking or damaging of property where photographs of the property are used as evidence in place of the property, the prosecuting attorney may release the property to the owner upon presentation of satisfactory proof of ownership.

(c) If wrongfully taken or damaged property is not photographed and authenticated under AS 12.45.086 and the property is used as evidence in a criminal proceeding or a children's court proceeding, the law enforcement agency in possession of the property shall return it to the owner upon presentation of satisfactory proof of ownership within 60 days after the final disposition of the case.

Sec. 12.36.030. Disposal of unclaimed property used as evidence.

(a) Unless the property is a firearm, ammunition, or a firearm part subject to AS 18.65.340, if property that is used as evidence in a criminal proceeding or a children's court proceeding, including wrongfully taken or damaged property, is not claimed by the owner within one year after the final disposition of the case, the law enforcement agency having custody of the property shall dispose of it under (b) of this section.

(b) Property referenced in (a) of this section shall be disposed of by a

(1) municipal law enforcement agency in the following manner:

(A) for that part of the property that is subject to AS 34.45.110 — 34.45.780, in accordance with AS 34.45.110 — 34.45.780;

(B) for that part of the property that is not subject to AS 34.45.110 — 34.45.780, by selling the property in the same manner as a sale upon execution; after paying the expenses for the preservation and sale of the property, the law enforcement agency shall dispose of the proceeds of the sale in the same manner as money collected upon a judgment;

(2) state law enforcement agency in the following manner:

(A) if the property is a firearm or ammunition, in the manner provided in AS 18.65.340;

(B) if the property is other than a firearm or ammunition, and the property is

(i) subject to AS 34.45.110 — 34.45.780, in accordance with AS 34.45.110 —

34.45.780;

(ii) not subject to AS 34.45.110 — 34.45.780, by selling the property in the same manner as a sale upon execution; after paying the expenses for the preservation and sale of the property, the law enforcement agency shall dispose of the proceeds of the sale in the same manner as money collected upon a judgment.

(c) This section does not apply to property that comes into the custody of a law enforcement agency of a municipality if the municipality has adopted an ordinance providing for the custody and disposition of the property and if the ordinance requires that

(1) property held or collected as evidence in a children's court proceeding, a criminal proceeding, or an official investigation of a crime is to be held until at least 30 days after final disposition of the case to which the evidence pertains; and

(2) the municipality make reasonable attempts to identify and locate the owner of the property that is unclaimed.

Sec. 12.36.040. Disposal of property when owner unknown; exceptions.

(a) When the owner of property is unknown and the property comes into the possession of a law enforcement agency as suspected evidence of a crime but is not used in a criminal proceeding or a children's court proceeding, or when the property comes into the possession of a law enforcement agency by other means, the property shall be held for one year. If the property is not claimed within one year of the date it comes into the possession of a law enforcement agency, the property shall be disposed of as provided in AS 12.36.030(b).

(b) This section does not apply to property that comes into the custody of a law enforcement agency of a municipality that has adopted an ordinance providing for the custody and disposition of property that meets the requirements specified in AS 12.36.030(c).

Sec. 12.36.045. When finder of property is considered the owner.

(a) When a private individual obtains property of another that is lost, mislaid, or delivered to the individual by mistake, the individual delivers that property to a law enforcement agency, and the true owner of the property remains unknown for a period of one year or does not claim the property within one year, the individual delivering the property shall be considered the owner of the property under this chapter if possession of the property by the individual is otherwise legal. If, after the one-year period, the private individual who delivered the property to the law enforcement agency cannot be found or does not want the property, the property shall be disposed of by the agency as if the owner is unknown.

(b) This section does not apply to property that comes into the custody of a law enforcement agency of a municipality that has adopted an ordinance providing for the custody and disposition of property that meets the requirements specified in AS 12.36.030(c).

Sec. 12.36.050. Remission of forfeited property.

(a) A claimant seeking remission of the claimant's interest in a weapon ordered forfeited under

AS 12.55.015(a)(9) shall prove to the court by a preponderance of evidence that the claimant

(1) has a valid interest in the weapon, acquired in good faith;

(2) did not knowingly participate in the commission of the crime in which the weapon was used; and

(3) did not know or have reasonable cause to believe that the weapon was used or would be used to commit a crime.

(b) Upon a showing that a claimant is entitled to relief under (a) of this section, the court may order that the weapon be released to the claimant.

(c) A claim may not be filed under this section more than 120 days after the entry of the last final judgment in the case in which the weapon was ordered forfeited.

Sec. 12.36.060. Disposal of forfeited deadly weapons.

(a) A deadly weapon, other than a firearm or ammunition, forfeited to the state under AS 12.55.015(a)(9), unless remitted under AS 12.36.050, shall be disposed of by the commissioner of public safety under this section. Under this subsection, the commissioner of public safety

(1) may declare a weapon surplus and transfer it to the commissioner of administration;

(2) may, if the weapon is suitable for law enforcement purposes, training, or identification, retain the weapon for use by the Department of Public Safety or transfer the weapon to the municipal law enforcement agency making the arrest that led to the forfeiture;

(3) shall destroy a weapon that is unsafe or unlawful.

(b) The commissioner of public safety may adopt regulations necessary to carry out the provisions of this section.

(c) A firearm or ammunition forfeited to the state under AS 12.55.015(a)(9), unless remitted under AS 12.36.050, shall be disposed of as provided in AS 18.65.340.

Sec. 12.36.070. Return of property by hearing.

(a) A crime victim who is the owner of property not belonging to a law enforcement agency that is in the custody of the agency under this chapter may request that the office of victims' rights request that the agency return the property to the crime victim. The request under this subsection shall be filed by the office of victims' rights on behalf of the crime victim after the office has conducted an investigation and has concluded that the crime victim is entitled to the return of the property under the factors listed in (c) of this section.

(b) Within 10 days after receipt of a request under (a) of this section and following reasonable notice to the prosecution, defense, and other interested parties, the agency shall request a hearing before the court to determine if the property shall be released to the crime victim. If the property is being held in connection with a criminal case, the hearing shall be before the court with jurisdiction of the criminal case. If no criminal case is pending regarding the property, the hearing shall be before a district or superior court where the property is located.

(c) At the hearing, a party that objects to the return of the property shall state the reason on the record. After a hearing, the court may order the return of the property in the custody of a law enforcement agency to the crime victim if

(1) the crime victim by a preponderance of the evidence provides satisfactory proof of ownership; and

(2) the party that objects to the return of the property fails to prove by a preponderance of the evidence that the property must be retained by the agency for evidentiary purposes under the provisions of this chapter or another law.

(d) If the court orders the return of the property to the crime victim, the court may impose reasonable conditions on the return. Those conditions may include an order that the crime victim retain and store the property so that the property is available for future court hearings, requiring photographs of the property to be taken, or any other condition the court considers necessary to maintain the evidentiary integrity of the property.

(e) If the agency fails to act on a request under (a) of this section within the deadline set in (b) of this section, the victims' advocate may request a hearing under (b) of this section. If the victims' advocate requests a hearing under this subsection, the role of the victims' advocate in the hearing is limited to advocating for the return of the victim's property. The victims' advocate may not participate in the case as a party or an intervenor unless the court orders otherwise.

(f) In this section, “crime victim” has the meaning given to “victim” in AS 12.55.185.

Sec. 12.36.090. Definitions.

In AS 12.36.010 — 12.36.090,

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

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

Article 2. Preservation of Evidence.

Sec. 12.36.200. Preservation of evidence.

(a) Notwithstanding AS 12.36.010 — 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency shall preserve

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

(2) biological evidence in an amount and manner that is sufficient to develop a DNA profile from any material contained in or included on the evidence that was obtained in relation to the prosecution of a person convicted of, or adjudicated a delinquent for, a crime under AS 11.41.100 — 11.41.130, a person convicted of a crime after being indicted under AS 11.41.410 or 11.41.434 while the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender, or a person adjudicated a delinquent for a crime after the filing of a petition alleging a violation of AS 11.41.410 or 11.41.434 while the person remains committed to

a juvenile facility or subject to registration as a sex offender.

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

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

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

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

(2) the agency sends, by certified mail with proof of delivery, notice of its intent to destroy evidence to

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

(B) the attorneys of record, if known, for each person listed in (A) of this paragraph;

(C) the Public Defender Agency;

(D) the district attorney responsible for prosecuting the crime; and

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

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

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

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

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

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

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

(i) In this section,

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

(2) “biological evidence” means

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

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

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

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

(3) “DNA” means deoxyribonucleic acid;

(4) “prisoner” has the meaning given in AS 33.30.901.

Chapter 37. Interceptions and Access to Communications.

Article 1. Interception of Private Communications.

Sec. 12.37.010. Authorization to intercept communications.

The attorney general, or a person designated in writing or by law to act for the attorney general, may authorize, in writing, an ex parte application to a court of competent jurisdiction for an order authorizing the interception of a private communication if the interception may provide evidence of, or may assist in the apprehension of persons who have committed, are committing, or are planning to commit, the following offenses:

(1) murder in the first or second degree under AS 11.41.100 — 11.41.110;

(2) kidnapping under AS 11.41.300;

(3) a class A or unclassified felony drug offense under AS 11.71;

(4) sex trafficking in the first or second degree under AS 11.66.110 and 11.66.120; or

(5) human trafficking in the first degree under AS 11.41.360.

Sec. 12.37.020. Application for order authorizing a communication interception.

(a) An application for an order authorizing the interception of a private communication shall be made in writing upon oath or affirmation and must state

(1) the authority of the applicant to make the application;

(2) the identity of the peace officer for whom the authority to intercept the communication is sought;

(3) the facts relied upon by the applicant for the order, including

(A) if known, the identity of the particular person committing the offense and whose communication is to be intercepted;

(B) the details as to the particular offense that has been, is being, or is about to be committed;

(C) the specific type of communication to be intercepted;

(D) a showing that there is probable cause to believe that the communication will be communicated on the specific communication facility involved or at the specific place where the oral communication is to be intercepted;

(E) a showing that there is probable cause to believe that the facility from which, or the place where, the communication is to be intercepted, is, has been, or is about to be used in connection with the commission of the offense, or is leased to, listed in the name of, or commonly used by, the person whose communication is to be intercepted;

(F) the character and location of the specific communication facility involved or the specific place where the oral communication is to be intercepted;

(G) the objective of the investigation;

(H) a statement of the period of time for which the interception is required to be maintained, and, if the objective of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a specific statement of facts establishing probable cause to believe that additional communications of the same type will continue to occur;

(I) a specific statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or are too dangerous to employ;

(4) the facts known to the applicant concerning all previous applications made to a court for the issuance of an order authorizing the interception of a private communication involving any of the same facilities or places specified in the current application or involving the same person whose communication is to be intercepted, and the action taken by the court on each application;

(5) if the application is for an extension of a previously issued order, a statement of facts showing the results obtained thus far from the interception, or a reasonable explanation for the failure to obtain results;

(6) a proposed order authorizing the communication interception; and

(7) any additional facts in support of the application considered appropriate by the applicant or by the court.

(b) If an applicant for an order authorizing a communications interception is relying upon uncorroborated evidence provided by a confidential informant, the court may hold an in camera hearing at which it may inquire as to the identity of the informant or as to any other relevant information concerning the basis upon which the applicant is applying for the order.

Sec. 12.37.030. Requirements for an order authorizing a communications interception.

(a) Upon consideration of an application, the court may enter an ex parte order authorizing the

interception of a private communication if the court determines, on the basis of the application, that

(1) there is probable cause to believe that the person whose communication is to be intercepted is committing, has committed, or is planning to commit an offense listed in AS 12.37.010;

(2) there is probable cause to believe that a communication concerning the offense may be obtained through the interception;

(3) there is probable cause to believe that the facility from which, or the place where, the communication is to be intercepted, is, has been, or is about to be used in connection with the commission of the offense, or is leased to, listed in the name of, or commonly used by, the person whose communication is to be intercepted;

(4) normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous to employ; and

(5) if the application, other than an application for an extension, is for an order to intercept a communication of a person, or involving a communications facility, that was the subject of a previous application, the current application is based upon new evidence or information different from and in addition to the evidence or information offered to support the previous application.

(b) In addition to exercising authority under (a) of this section, on consideration of an application relating to a private communication of a minor, the court may enter an ex parte order authorizing the interception of the private communication. The court may enter the order only if the court determines, after making appropriate findings of fact and on the basis of the application, that there is probable cause to believe that

(1) a party to the private communication

(A) has committed, is committing, or is about to commit a felony or misdemeanor;

(B) has been, is, or is about to be a victim of a felony or misdemeanor; or

(C) has been, is, or is about to be a witness to a felony or misdemeanor;

(2) the health or safety of a minor is in danger; or

(3) a parent of a minor has consented in good faith to the interception of a communication of the minor based on the parent's objectively reasonable belief that it is necessary for the welfare of the minor and is in the best interest of the minor.

(c) In (b) of this section, “minor” and “parent” have the meanings given in AS 42.20.390.

Sec. 12.37.040. Contents of order authorizing a communications interception; limitations on disclosure.

(a) An order entered under AS 12.37.030 must state

(1) that the court is authorized to enter the order;

(2) if known, the identity of, or a particular description of, the person whose communications are to be intercepted;

(3) the character and location of the particular communication facility or the particular place of the communication as to which authority to intercept is granted;

(4) a specific description of the type of communication to be intercepted and a statement of the particular offense to which it relates;

(5) the identity of the peace officer or officers to whom the authority to intercept a communication is given and the identity of the person who authorized the application; and

(6) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been first obtained, and a statement that the interception shall begin and terminate as soon as practicable and be conducted in such a manner as to minimize the interception of communications not otherwise subject to interception.

(b) An order entered under AS 12.37.030 may not authorize the interception of private communications for a period of time exceeding 30 days or that period necessary to achieve the objective of the authorization, whichever is shorter. The authorized interception period begins on the day on which the peace officer first begins to conduct an interception under the order or 10 days after the order is entered, whichever is earlier. Extensions of 30 days or less may be granted if application for each extension order is made under AS 12.37.020 and the necessary findings are made by the court under AS 12.37.030.

(c) The court may require an applicant to file periodic reports with the court, showing what progress is being made toward achieving the authorized objective of the communication interception and what need exists for continued interception. The intervals at which the reports are to be filed shall be determined by the court.

(d) An order entered under AS 12.37.030 may, upon request of the applicant, direct that a communications common carrier, provider of wire or electronic communication services, landlord, owner, building operator, custodian, or other person furnish the applicant, without delay, all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively. The obligations of a communications common carrier under an order may include the obligation to conduct an in-progress trace during an interception. A communications common carrier, provider of wire or electronic communication services, landlord, owner, building operator, custodian, or other person who furnishes facilities or technical assistance under this subsection shall be compensated by the applicant at prevailing rates.

(e) A communications common carrier, provider of wire or electronic communication services, landlord, owner, building operator, custodian, or other person who, under this section, has been shown a copy of an order authorizing the interception of a private communication may not disclose the existence of the order or of the device used to accomplish the interception unless

(1) the person is required to do so by legal process; and

(2) the person gives prior notification to the attorney general or the attorney general's designee who authorized the application for the order.

(f) An order entered under AS 12.37.030 may, upon the request of the applicant, authorize the applicant to enter a designated place or facility as often as necessary to install, maintain, or remove an intercepting device. The applicant shall notify the court of each such entry before its occurrence, if practicable. If prior notice is not practicable, the applicant shall notify the court within 72 hours after the entry.

Sec. 12.37.050. Privileged communications.
An otherwise privileged communication intercepted in accordance with, or in violation of, the provisions of AS 12.37.010 — 12.37.130 does not lose its privileged character by reason of the interception.

Sec. 12.37.060. Collateral authority of court; interpretation of AS 12.37.010 — 12.37.130.
(a) Notwithstanding any other provision of AS 12.37.010 — 12.37.130, a court to which an application is made for an order authorizing the interception of a private communication may take the evidence, make the findings, or issue the other orders necessary to conform the proceedings or the entry of an order to the United States Constitution, the Constitution of the State of Alaska, or any applicable law of the United States or of the state.

(b) When the language of AS 12.37.010 — 12.37.130 is the same or similar to the language of 18 U.S.C. 2510 — 2521, the courts of this state in construing AS 12.37.010 — 12.37.130 shall follow the construction given to those federal statutes by the federal courts.

Sec. 12.37.070. Records and recordings and custody of them.
(a) A communication intercepted under AS 12.37.010 — 12.37.130 shall, if practicable, be recorded by tape or wire or other comparable method. The recording shall, if practicable, be done in a way that will protect it from editing or other alteration. During an interception, the peace officer authorized to act under the court's order shall, if practicable, keep a signed, written record of the interception, that shall include the following information:

(1) the date and hours during which the interception equipment or site was monitored;

(2) the time and duration of each intercepted communication;

(3) the parties to each intercepted communication, if known; and

(4) a summary of the contents of each intercepted communication.

(b) Immediately upon expiration of the authorized interception period specified in an order entered under AS 12.37.030 or, if an extension order has been entered, upon expiration of the authorized interception period specified in that order, any tapes or other recordings, and any records made during the interception, and all orders authorizing the interception, shall be transferred to the court that entered the order and shall be sealed under its direction. Custody of the tapes, other recordings, and records of the interception shall be maintained as the court directs. The tapes, recordings, and records of the interception may not be destroyed except upon order of the court, and in any event shall be kept for a minimum period of 10 years. Duplicate recordings and records of the interception may be made for disclosure or use under AS 12.37.090(d) and 12.37.110. The presence of the seal required by this subsection, or a satisfactory explanation for its absence, is a prerequisite for the use or disclosure of the contents of any communication intercepted under AS 12.37.010 — 12.37.130.

Sec. 12.37.080. Custody of applications and orders; penalty for disclosure.
(a) Except for a copy that may be retained for use by the applicant, all applications made and orders entered under AS 12.37.010 — 12.37.130 for the interception of private communications shall be sealed by the court and maintained as the court directs. The applications and orders may

not be destroyed except upon order of the court and in any event shall be kept for a minimum period of 10 years.

(b) In addition to any other remedies or penalties provided by law, the disclosure of applications and orders in violation of AS 12.37.010 — 12.37.130 is punishable under AS 09.50.020 as contempt of court.

Sec. 12.37.090. Notice of interception and disclosure.
(a) Within a reasonable period of time, but no later than 90 days following the expiration of the authorized interception period specified in an order entered under AS 12.37.030 or, if an extension order has been entered, upon expiration of the authorized interception period specified in that order, the court entering the order shall cause a notice of interception to be served on

(1) a person who is named in the order; or

(2) a party to the intercepted communications if the court determines in its discretion that the party should be informed in the interest of justice.

(b) The notice of interception must include a statement of

(1) the fact of the entry of the order under AS 12.37.030;

(2) the date of the entry of the order;

(3) the period of time for which the interception was authorized; and

(4) whether and how many private communications were intercepted.

(c) On an ex parte showing of good cause, the court may postpone service of the notice of interception.

(d) Upon the filing of a motion, the court may make available for inspection to a person or the person's attorney, as the court determines to be in the interest of justice, those portions of an intercepted communication, an application for an order, and an order that the court considers appropriate.

Sec. 12.37.100. Approval for unanticipated interception.
If, while intercepting a private communication under the provisions of AS 12.37.010 — 12.37.130, a peace officer intercepts a communication that relates to a felony offense other than one specified in the order of authorization, the attorney general, or a person designated in writing or by law to act for the attorney general, may file a motion for an order approving that interception so that the communication, or evidence derived from it, may be used during testimony in an official proceeding. A court may enter an order approving the interception if it finds that the person who intercepted the communication was otherwise acting under the provisions of AS 12.37.010 — 12.37.130.

Sec. 12.37.110. Use of intercepted communication.
An intercepted private communication, and evidence derived from it, may not be received in evidence or otherwise disclosed in an official proceeding unless each party to the communication

who is a party in the official proceeding was furnished, at least 10 days before the proceeding, with a copy of the court order authorizing the interception and of the application for authorization under which the order was issued. The 10-day period may be waived by the presiding official if the presiding official finds that it was not practicable to furnish the person with the information 10 days before the proceeding and also finds that the person will not be prejudiced by the delay in receiving the information.

Sec. 12.37.120. Suppression of unlawful interceptions.
(a) A motion to suppress the contents of an intercepted private communication, or evidence derived from it, may be filed in a proceeding on the ground that the

(1) interception was unlawful;

(2) order of authorization under which the communication was intercepted is insufficient on its face; or

(3) interception was not made in substantial compliance with the order of authorization.

(b) Upon the filing of a motion to suppress under this section, the court may make available to the moving party or that party's attorney, for inspection, the portion or portions of the intercepted communication, applications, and orders that the court determines to be in the interest of justice.

(c) Suppression is the only judicial sanction available for a nonconstitutional violation of AS 12.37.010 — 12.37.130 involving an intercepted private communication.

Sec. 12.37.130. Required reports.
(a) Within 30 days after the expiration of the authorized interception period specified in an order entered under AS 12.37.030 or, if an extension order has been entered, upon expiration of the authorized interception period specified in that order, the court entering the order shall report to the Administrative Office of the United States Courts the following information:

(1) the fact that an order or extension order was applied for;

(2) the kind of order or extension order applied for;

(3) whether the order or extension order was granted as applied for or was granted as modified;

(4) the period of time for which the interception is authorized by the order and the number of, and duration of the authorized interception period specified in, any extension orders regarding that order;

(5) the offense specified in the order, extension order, or application;

(6) the name and title of the applicant; and

(7) the nature of the facilities from which or the place where the communication was to be intercepted.

(b) In January of each year, the attorney general or the attorney general's designee shall report to the Administrative Office of the United States Courts the following information with respect to orders and extension orders obtained in the preceding calendar year:

(1) the information required by (a) of this section with respect to each application for an order or extension order made;

(2) a general description of the interceptions made under the order or extension, including the approximate

(A) nature and frequency of incriminating communications intercepted;

(B) nature and frequency of other communications intercepted;

(C) number of persons whose communications were intercepted; and

(D) nature, amount, and cost of the manpower and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under the order or extension order, and the offenses for which arrests were made;

(4) the number of trials resulting from the interceptions;

(5) the number of motions to suppress made with respect to the interceptions, the number of such motions granted, and the number of such motions denied; and

(6) the number of convictions resulting from interceptions and the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions.

(c) In addition to the report required by (b) of this section, the attorney general or the attorney general's designee shall prepare and make available to the public annual reports on the operation of AS 12.37.010 — 12.37.130. The reports shall contain the following information:

(1) the number of applications made under AS 12.37.010 — 12.37.130;

(2) the number of orders entered by the court;

(3) the effective period of time for which each interception was authorized;

(4) the number of, and duration of the authorized interception period specified in, any extension orders;

(5) the offenses in connection with which the communications were sought;

(6) the names and titles of the applicants;

(7) the number of indictments or other charges resulting from each application;

(8) the offenses that each indictment or other charge relates to; and

(9) the disposition of each indictment or other charge.

Article 2. Pen Registers and Trap Devices.

Sec. 12.37.200. Authorization to use pen registers and trap devices.

Upon application by a peace officer made in conformity with any provision of federal law authorizing such an application, a court may issue an order authorizing or concerning the use of a

pen register or a trap device as permitted under federal law.

Article 3. Communications in Electronic Storage.
Sec. 12.37.300. Authorization for access to and use of communications in electronic storage.
Upon application by a peace officer made in conformity with any provision of federal law authorizing such an application, a court may issue an order authorizing or concerning access to and disclosure or use of communications in electronic storage as permitted under federal law.

Article 4. Police Use of Body Wires.
Sec. 12.37.400. Police use of body wire.
(a) A peace officer may intercept an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, if

(1) the interception and monitoring occurs

(A) during the investigation of a crime or the arrest of a person for a crime; and

(B) for the purpose of ensuring the safety of the peace officer conducting the investigation or making the arrest;

(2) the peace officer intercepting the conversation is a party to the oral communication and has consented to the interception; and

(3) the communication intercepted is not recorded.

(b) A peace officer monitoring a receiving unit under (a) of this section, or any other person intercepting an oral communication transmitted under (a) of this section, is not competent to testify in a criminal proceeding involving a party to the oral communication about the contents of the oral communication that was intercepted or the fact that the communication occurred.

Article 5. General Provisions.
Sec. 12.37.900. Definitions.
In this chapter,

(1) “communications common carrier” has the meaning given in AS 42.20.390;

(2) “contents” has the meaning given in AS 42.20.390;

(3) “court” means superior court, except that in AS 12.37.200 it means either superior or district court;

(4) “electronic communication” has the meaning given in AS 42.20.390;

(5) “electronic communication service” has the meaning given in AS 42.20.390;

(6) “electronic storage” means any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication, and any storage of the communication by an electronic communication service for purposes of backup protection of the communication;

(7) “in-progress trace” means to determine the origin of a wire communication to a telephone instrument, equipment, or facility during the course of the communication;

(8) “intercept” has the meaning given in AS 42.20.390;

(9) “official proceeding” means a judicial, legislative, or administrative proceeding or any other proceeding before a government agency or official authorized to hear evidence under oath, other than a grand jury;

(10) “oral communication” has the meaning given in AS 42.20.390;

(11) “peace officer” has the meaning given in AS 11.81.900(b);

(12) “pen register” means a device or apparatus that is connected to a telephone instrument, equipment, or facility to determine the destination of a wire communication to a telephone instrument, equipment, or facility, but that does not intercept the contents of the communication; “pen register” does not include a device used by a provider or customer of a wire or electronic communication service for billing, or for recording as an incident to billing, for communications services provided by the provider, nor a device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(13) “private communication” has the meaning given in AS 42.20.390;

(14) “trap device” means a device or apparatus that is connected to a telephone instrument, equipment, or facility to determine the origin of a wire communication to the telephone instrument, equipment, or facility, but that does not intercept the contents of the communication;

(15) “wire communication” has the meaning given in AS 42.20.390.

Chapter 40. Grand Jury.

Sec. 12.40.010. Qualifications and manner of drawing grand jurors.
Grand jurors shall have the qualifications and be drawn as are trial jurors under AS 09.20.010 — 09.20.080.

Sec. 12.40.020. Number of jurors.
The grand jury consists of not less than 12 nor more than 18 members.

Sec. 12.40.030. Duty of inquiry into crimes and general powers.
The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety.

Sec. 12.40.040. Juror to disclose knowledge of crime.
If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it.

Sec. 12.40.050. Holding to answer as affecting indictment or presentment.
The grand jury may indict or present a person for a crime upon sufficient evidence, whether that person has been held to answer for the crime or not.

Sec. 12.40.060. Access to public jails, prisons, and public records.
The grand jury is entitled to access, at all reasonable times, to the public jails and prisons, to offices pertaining to the courts of justice in the state, and to all other public offices, and to the examination of all public records in the state.

Sec. 12.40.070. Duty of prosecuting attorney.
The prosecuting attorney

(1) shall submit an indictment to the grand jury and cause the evidence in support of the indictment to be brought before them in every case when a person is held to answer a criminal charge in the court where the jury is formed;

(2) may submit an indictment in any case when the prosecuting attorney has good reason to believe a crime has been committed that is triable by the court; and

(3) shall, when required by the grand jury, prepare indictments or presentments for them and attend their sittings to advise them in relation to their duties or to examine witnesses in their presence.

Sec. 12.40.080. Effect of failure to return indictment.
When a grand jury does not return an indictment, the charge is dismissed, and it may not be again submitted to or inquired into by the grand jury unless the court so orders.

Sec. 12.40.090. Questioning juror for conduct.
A grand juror cannot be questioned for anything the juror may say or any vote the juror may give while acting as a grand juror, in relation to any matter legally pending before the grand jury, except for a perjury of which the juror may have been guilty in giving testimony before that jury.

Sec. 12.40.100. Contents of indictment.
(a) The indictment must be direct and certain as it regards

(1) the party charged;

(2) the crime charged; and

(3) the particular circumstances of the crime charged when they are necessary to constitute a complete crime.

(b) The statement of the facts constituting the offense must be in ordinary and concise language, without repetition, and in a manner that will enable a person of common understanding to know what is intended.

(c) An indictment that complies with this section and with applicable rules adopted by the

supreme court is valid and need not specify aggravating factors set out in AS 12.55.155.

Sec. 12.40.110. Hearsay evidence in prosecutions for sexual offenses.

Chapter 45. Trial, Evidence, Compromise.

Article 1. Trial Jury.

Sec. 12.45.010. Formation of trial jury.

The qualification, disqualification, and exemption of jurors, the preparation of jury lists, and the composition of jury panel in criminal actions are the same as provided in civil actions.

Sec. 12.45.015. Introduction of victim and defendant to jury.

(a) During jury selection or as part of an opening statement at trial, the prosecuting attorney may introduce the victim to the jury, and the attorney for the defendant may introduce the defendant to the jury.

(b) In this section, "victim" has the meaning given in AS 12.55.185.

Sec. 12.45.018. Juror counseling following graphic evidence or testimony.

(a) The trial judge may offer not more than 10 hours of post-trial psychological counseling, without charge, to a juror or an alternate juror who serves on a trial jury in a trial involving extraordinarily graphic, gruesome, or emotional evidence or testimony.

(b) The counseling offered under (a) of this section applies only to a juror or alternate juror who serves on a trial jury for a trial involving the following offenses:

(1) murder under AS 11.41.100 and 11.41.110;

(2) manslaughter under AS 11.41.120;

(3) criminally negligent homicide under AS 11.41.130;

(4) felonious assault under AS 11.41.200 — 11.41.220;

(5) a sexual offense under AS 11.41.410 — 11.41.460.

(c) The counseling offered under (a) of this section

(1) must occur not later than 180 days after the jury is dismissed;

(2) may be provided by the court system, by a state agency, or by contract; and

(3) may be individual or group counseling.

Article 2. Discovery, Testimony, and Evidence.

Sec. 12.45.020. Conviction on testimony of accomplice and corroboration.
A conviction shall not be had on the testimony of an accomplice unless it is corroborated by other evidence that tends to connect the defendant with the commission of the crime; and the corroboration is not sufficient if it merely shows the commission of the crime or the circumstances of the commission.

Sec. 12.45.030. Necessary evidence for false pretenses. [Repealed, § 21 ch 166 SLA 1978.]
Sec. 12.45.035. Admissibility of DNA profiles.
(a) In a criminal action or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant fact, if the court finds that the technique underlying the evidence is scientifically valid. The admission of the DNA profile does not require a finding of general acceptance in the relevant scientific community of DNA profile evidence.

(b) In this section,
(1) “deoxyribonucleic acid” means the molecules in all cellular forms that contain genetic information in a patterned chemical structure for each individual;

(2) “DNA profile”
(A) means an analysis of blood, semen, tissue, or other cells bearing deoxyribonucleic acid resulting in the identification of the individual's patterned chemical structure of genetic information;

(B) includes statistical population frequency comparisons of the patterned chemical structures described in (A) of this paragraph.

Sec. 12.45.037. Admissibility of expert testimony relating to criminal street gang activity.
(a) In a criminal prosecution, expert testimony is admissible to show, in regard to a specific criminal street gang or criminal street gangs whose conduct is relevant to the case,
(1) common characteristics of persons who are members of the criminal street gang or criminal street gangs;

(2) rivalries between specific criminal street gangs;

(3) common practices and operations of the criminal street gang or criminal street gangs and the members of those gangs;

(4) social customs and behavior of members of the criminal street gang or the criminal street gangs;

(5) terminology used by members of the criminal street gang or the criminal street gangs;

(6) codes of conduct of the particular criminal street gang or criminal street gangs; and

(7) the types of crimes that are likely to be committed by the particular criminal street gang.

(b) In this section, “criminal street gang” has the meaning given in AS 11.81.900(b).

Sec. 12.45.040. Necessary evidence for prostitution or seduction. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.45.042. Mental examination of victim.

In a criminal prosecution under AS 11.41, the court may not order or compel the victim to undergo a psychiatric or psychological examination unless

(1) the victim's psychiatric or psychological condition is an element of the offense charged; or

(2) the prosecution has given notice that it will present evidence at trial that the victim suffers from a continuing psychological or psychiatric condition that resulted from the offense charged.

Sec. 12.45.045. Evidence of past sexual conduct in trials of certain sexual offenses.

(a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse of a minor in any degree, unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence of the sexual conduct of the complaining witness, occurring either before or after the offense charged, may not be admitted nor may reference be made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant shall apply for an order of the court not later than five days before trial or at a later time as the court may, for good cause, permit. The defendant may, for good cause shown, apply for an order during trial if the request is based on information learned after the deadline or during the trial. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

(b) In the absence of a persuasive showing to the contrary, evidence of the complaining witness' sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(c) In this section “complaining witness” means the alleged victim of the crime charged, the prosecution of which is subject to this section.

Sec. 12.45.046. Testimony of children in criminal proceedings.

(a) In a criminal proceeding under AS 11.41 involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad litem for the child;

(2) on its own motion or on the motion of the party presenting the witness or the guardian ad litem of the child, may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

(b) In making a determination under (a)(2) of this section, the court shall consider factors it considers relevant, including

(1) the child's chronological age;

(2) the child's level of development;

(3) the child's general physical health;

(4) any physical, emotional, or psychological injury experienced by the child; and

(5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the defendant, the court, and the finder of fact in the proceeding. If the court authorizes use of closed circuit televised testimony under this subsection,

(1) each of the following may be in the room with the child when the child testifies:

(A) the prosecuting attorney;

(B) the attorney for the defendant; and

(C) operators of the closed circuit television equipment;

(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the well-being of the child.

(d) When a child is to testify under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall permit the defendant to attend in another location, and shall afford the defendant a means of viewing the child's testimony and of communicating with the defendant's attorney throughout the proceedings. Upon request of the defendant or the defendant's attorney, the court shall permit a recess to allow them to confer. The court shall provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

(e) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may authorize the use of one-way mirrors in conjunction with the taking of the child's testimony. The attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.

(f) If the court does not find under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures will result in the child's inability to effectively communicate, the court may, after taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. In addition to other procedures it finds appropriate, the court may

(1) allow the child to testify while sitting on the floor or on an appropriately sized chair;

(2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and

(3) order a recess when the energy, comfort, or attention span of the child warrants.

Secs. 12.45.047 , 12.45.048. Testimony by young victim of sexual offense. [Repealed, § 4 ch 92 SLA 1988.]

Sec. 12.45.049. Privilege relating to domestic violence and sexual assault counseling.
Confidential communications between a victim of domestic violence or sexual assault and a victim counselor are privileged under AS 18.66.200 — 18.66.250.

Sec. 12.45.050. Limitation on discovery of statement of prosecution witness.
In a criminal prosecution, no statement or report in the possession of the state which was made by a prosecution witness or prospective prosecution witness (other than the defendant) to an agent of the state may be the subject of subpoena, discovery, or inspection until the witness has testified on direct examination at the preliminary hearing, or in the trial of the case.

Sec. 12.45.060. Discovery after direct examination of witness.
After a witness called by the state has testified on direct examination, the court shall, on motion of the defendant, order the state to produce any statement of the witness in the possession of the state that relates to the subject matter as to which the witness has testified. If the entire contents of the statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for examination and use.

Sec. 12.45.070. Discovery of portions of statement.
If the state claims that any statement ordered to be produced under AS 12.45.060 contains matter that does not relate to the subject matter of the testimony of the witness, the court shall order the state to deliver the statement for the inspection of the court in chambers. Upon delivery the court shall excise the portions of the statement that do not relate to the subject matter of the testimony of the witness. With the material excised, the court shall then direct delivery of the statement to the defendant for the use of the defendant. If, pursuant to this procedure, any portion of the statement is withheld from the defendant and the defendant objects to the withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of the statement shall be preserved by the state and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. When a statement is delivered to a defendant, the court may recess the trial for the defendant's examination of the statement and preparation for its use in the trial.

Sec. 12.45.080. Disposition of proceeding upon failure of state to comply with order.
If the state elects not to comply with an order of the court to deliver to the defendant a statement or a portion of a statement as the court may direct, the court shall strike from the record the testimony of the witness, and the preliminary hearing or trial shall proceed unless the court in its discretion determines that the interests of justice require that the preliminary hearing be terminated immediately or a mistrial be declared.

Sec. 12.45.082. Definition of “statement”.
In AS 12.45.060 — 12.45.080, the term “statement,” in relation to any witness called by the state, means

(1) a written statement made by the witness and signed or otherwise adopted or approved by the witness; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription of the statement that is a substantially verbatim recital of an oral statement made by the witness to an agent of the state and recorded contemporaneously with the making of the oral statement.

Sec. 12.45.083. Mental disease or defect excluding responsibility. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.47.]
For present provisions, see AS 12.47.

For present provisions, see AS 12.47.

Sec. 12.45.084. Laboratory report of controlled substances.
(a) In a prosecution under AS 11.71.010 — 11.71.060, a complete copy of an official laboratory report from the Department of Public Safety or a laboratory operated by another law enforcement agency is prima facie evidence of the content, identity, and weight of a controlled substance. The report must be signed by the person performing the analysis and must state that the substance which is the basis of the alleged offense has been weighed and analyzed. In the report, the author shall state with specificity findings as to the content, weight, and identity of the substance.

(b) A sworn statement prepared by the author of the report provided for in (a) of this section must be attached to the report. The statement must set out the identity of the author and include a statement that the author is an employee of the laboratory issuing the report and that performing the analysis is a part of the author's regular duties. The statement must also include an outline of the author's education, training, and experience for performing an analysis. The author shall state that scientifically accepted tests were performed with due caution, and whether to the author's knowledge the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(c) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the defendant if the defendant has no attorney, not later than 20 days before a proceeding in which the report is to be used against the accused. However, at a preliminary hearing or grand jury proceeding, the report may be used without having previously been served upon the accused.

(d) The accused or the accused's attorney may demand the testimony of the person signing the report, by serving a written demand showing cause upon the prosecuting attorney within seven days from receipt of the report.

(e) A report issued for use under this section must contain notice of the right of the accused to demand the testimony of the person signing the report.

Sec. 12.45.085. Evidence of mental disease or defect. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.47.]
For present provisions, see AS 12.47.

For present provisions, see AS 12.47.

Sec. 12.45.086. Photographic evidence of property wrongfully taken or damaged.
(a) In a criminal proceeding or a children's court proceeding involving the wrongful taking or damaging of property, photographs of the property are competent evidence of the property and are admissible in the proceeding to the same extent as if the property had been introduced as evidence.

(b) Photographs of property that are to be introduced as evidence under this section shall be accompanied by a written description of the property, the name of the owner of the property, the location where the alleged crime occurred, the name of the investigating peace officer, the date the photograph was taken, and the name and signature of the photographer. The written description shall be signed by the investigating peace officer under penalty of perjury under AS 09.63.020.

(c) In a prosecution for a violation of AS 11.46.120 — 11.46.150 in which the property is commercial fishing gear as defined in AS 16.43.990, the gear shall be returned to the owner as soon as possible. The prosecutor may obtain photographs of the gear for use as evidence in accordance with (a) and (b) of this section.

Secs. 12.45.087 — 12.45.115. Psychiatric examination; procedure. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.47.]
For present provisions, see AS 12.47.

For present provisions, see AS 12.47.

Article 3. Compromise and Satisfaction.
Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action.
If a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed
(1) by or upon a peace officer, judge, or magistrate while in the execution of the duties of that office;

(2) riotously;

(3) with an intent to commit a felony;

(4) larcenously;

(5) against
(A) a spouse or a former spouse of the defendant;

(B) a parent, grandparent, child, or grandchild of the defendant;

(C) a member of the social unit comprised of those living together in the same dwelling as

the defendant; or

(D) a person who is not a spouse or former spouse of the defendant but who previously lived in a spousal relationship with the defendant.

Sec. 12.45.130. Acknowledgment of satisfaction by injured party.
If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that satisfaction has been received for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime.

Sec. 12.45.140. Compromise or stay upon compromise by other means prohibited.
A crime may not be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law.

Sec. 12.45.150. Order for private prosecutor to pay costs for malicious prosecution without probable cause. [Repealed, § 1 ch 19 SLA 1987.]
Sec. 12.45.155. [Renumbered as AS 12.45.084.]
Renumbered as AS 12.45.084.

Renumbered as AS 12.45.084.

Sec. 12.45.160. [Renumbered as AS 12.45.082.]
Renumbered as AS 12.45.082.

Renumbered as AS 12.45.082.

Chapter 47. Insanity and Competency to Stand Trial.

Sec. 12.47.010. Insanity as affirmative defense.
(a) In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, the defendant was unable, as a result of a mental disease or defect, to appreciate the nature and quality of that conduct.

(b) The affirmative defense defined in (a) of this section may not be raised at trial unless the defendant, within 10 days of entering a plea or such later time as the court may for good cause permit, files a written notice of intent to rely on the defense.

(c) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the affirmative defense under (a) of this section.

(d) The affirmative defense specified in (a) of this section is the affirmative defense of insanity. A defendant who successfully raises the affirmative defense of insanity shall be found not guilty by reason of insanity and the verdict shall so state.

Sec. 12.47.020. Mental disease or defect negating culpable mental state.
(a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect that tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering a plea, or at such later time as the court may for good cause permit, files a written notice of intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state that is an element of the crime, it shall enter a verdict of not guilty by reason of insanity. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered to have established the affirmative defense of insanity under AS 12.47.010. The defendant is then subject to the provisions of AS 12.47.090.

(c) If a verdict of not guilty by reason of insanity is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.47.030 and 12.47.050. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.47.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.47.090(c), the defendant is subject to the provisions of AS 12.47.090(d) — (i) and (k).

Sec. 12.47.030. Guilty but mentally ill.
(a) A defendant is guilty but mentally ill if, when the defendant engaged in the criminal conduct, the defendant lacked, as a result of a mental disease or defect, the substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law. A defendant found guilty but mentally ill is not relieved of criminal responsibility for criminal conduct and is subject to the provisions of AS 12.47.050.

(b) Evidence of a mental disease or defect that is manifested only by repeated criminal or antisocial conduct is not sufficient to establish that the defendant was guilty but mentally ill under (a) of this section.

Sec. 12.47.040. Form of verdict in certain cases involving insanity or mental disease or defect.
(a) In a prosecution for a crime when the affirmative defense of insanity is raised under AS 12.47.010, or when evidence of a mental disease or defect of the defendant is otherwise admissible at trial under AS 12.47.020, the trier of fact shall find, and the verdict shall state, whether the defendant is

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill.

(b) To return a verdict under (a)(4) of this section, the fact finder must find beyond a reasonable doubt that the defendant committed the crime and that, when the defendant committed the crime, the defendant was guilty but mentally ill as defined in AS 12.47.030.

(c) When the jury is instructed as to the verdicts under (a) of this section, it shall also be instructed on the dispositions available under AS 12.47.050 and 12.47.090.

Sec. 12.47.050. Disposition of defendant found guilty but mentally ill.

(a) If the trier of fact finds that a defendant is guilty but mentally ill, the court shall sentence the defendant as provided by law and shall enter the verdict of guilty but mentally ill as part of the judgment.

(b) The Department of Corrections shall provide mental health treatment to a defendant found guilty but mentally ill. The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes the defendant to be dangerous to the public peace or safety. Subject to (c) and (d) of this section, the Department of Corrections shall determine the course of treatment.

(c) When treatment terminates under (b) of this section, the defendant shall be required to serve the remainder of the sentence imposed.

(d) Notwithstanding any contrary provision of law, a defendant receiving treatment under (b) of this section may not be released

(1) on furlough under AS 33.30.101 — 33.30.131, except for treatment in a secure setting; or

(2) on parole.

(e) Not less than 30 days before the expiration of the sentence of a defendant found guilty but mentally ill, the commissioner of corrections shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant if

(1) the defendant is still receiving treatment under (b) of this section; and

(2) the commissioner has good cause to believe that the defendant is suffering from a mental illness that causes the defendant to be dangerous to the public peace or safety; in this paragraph, “mental illness” has the meaning given in AS 47.30.915.

Sec. 12.47.055. Treatment for other defendants not limited.

Nothing in AS 12.47.050 limits the discretion of the court to recommend, or of the Department of Corrections to provide, psychiatrically indicated treatment for a defendant who is not adjudged guilty but mentally ill.

Sec. 12.47.060. Post-conviction determination of mental illness.

(a) In a prosecution for a crime when the affirmative defense of insanity is not raised and when evidence of mental disease or defect of the defendant is not admitted at trial under AS 12.47.020, the defendant or the prosecuting attorney may raise the issue of whether the defendant is guilty but mentally ill. A party that seeks a post-conviction determination of guilty but mentally ill must give notice 10 days before trial of intent to do so; however, this deadline is waived if the opposing party presents evidence or argument at trial tending to show that the defendant may be guilty but mentally ill. A hearing must be held on this issue before the same fact finder that returned the verdict of guilty under procedures set by the court. In cases decided by a jury, at the request of the defendant and with the concurrence of the prosecuting attorney, the court may decide the issue. A waiver of consideration by a jury must be in writing and in person before the court. At the hearing, the fact finder shall determine whether the defendant has been shown to be guilty but mentally ill beyond a reasonable doubt, considering evidence presented at the hearing and any evidence relevant to the issue that was presented at trial.

(b) If the fact finder finds that a defendant is guilty but mentally ill, the court shall sentence the defendant as provided by law and shall enter the finding of guilty but mentally ill as part of the judgment.

(c) A defendant determined to be guilty but mentally ill under this section is subject to the provisions of AS 12.47.050.

(d) In this section, “guilty but mentally ill” has the meaning given in AS 12.47.030.

Sec. 12.47.070. Psychiatric or psychological examination.
(a) If a defendant has filed a notice of intention to rely on the affirmative defense of insanity under AS 12.47.010 or has filed notice under AS 12.47.020(a), or there is reason to doubt the defendant's fitness to proceed, or there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case, the court shall appoint a qualified psychiatrist or psychologist to examine and report on the mental condition of the defendant. If the court appoints a psychiatrist, the psychiatrist may select psychologists to provide assistance. If the defendant has filed notice under AS 12.47.090(a), the report shall consider whether the defendant can still be committed under AS 12.47.090(c). The court may order the defendant to be committed to a secure facility for the purpose of the examination for not more than 60 days or for a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section shall include the following:
(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's defense;

(4) if a notice of intention to rely on the affirmative defense of insanity under AS 12.47.010(b)

has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality of the defendant's conduct was impaired at the time of the crime charged; and

(5) if notice has been filed under AS 12.47.020(a), an opinion as to the capacity of the defendant to have a culpable mental state which is an element of the crime charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

Sec. 12.47.080. Procedure upon verdict of not guilty.
(a) If a defendant is found not guilty under AS 12.47.040(a)(2), the prosecuting attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation to determine the need for treatment if the prosecuting attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to self or others.

(b) In this section, “mental illness” has the meaning given in AS 47.30.915.

Sec. 12.47.090. Procedure after raising defense of insanity.
(a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.47.010 or files notice under AS 12.47.020(a), the defendant shall also file notice as to whether, if found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), the defendant will assert that the defendant is not presently suffering from any mental illness that causes the defendant to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), and has not filed the notice required under (a) of this section, the court shall immediately commit the defendant to the custody of the commissioner of family and community services.

(c) If the defendant is found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), and has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of not guilty by reason of insanity to determine the necessity of commitment. The hearing shall be held before the same trier of fact as heard the underlying charge. At the hearing, the defendant has the burden of proving by clear and convincing evidence that the defendant is not presently suffering from any mental illness that causes the defendant to be dangerous to the public. If the court or jury determines that the defendant has failed to meet the burden of proof, the court shall order the defendant committed to the custody of the commissioner of family and community services. If the hearing is before a jury, the verdict must be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of

time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) or until the mental illness is cured or corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for continuing commitment under this section reviewed by the court sitting without a jury under a petition filed in the superior court at intervals beginning no sooner than a year from the defendant's initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection are the same as at a hearing under (c) of this section. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if the attorney of record is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (e) of this section. On the grounds that the defendant has been cured of any mental illness that would cause the defendant to be dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of family and community services or the commissioner's authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) If the court finds that a defendant committed under (b) or (c) of this section can be adequately controlled and treated in the community with proper supervision, the court may order the defendant conditionally released from confinement under AS 12.47.092 for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) or until the mental illness is cured or corrected, whichever first occurs, as determined at a hearing under (c) of this section.

(k) In this section,

(1) “dangerous” means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is “dangerous” may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property;

(2) “mental illness” means any mental condition that increases the propensity of the defendant to be dangerous to the public peace or safety; however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.47.010, or that the mental illness presently suffered by the defendant be the same one the defendant suffered at the time of the criminal conduct.

Sec. 12.47.092. Procedure for conditional release.

(a) A defendant committed to the custody of the commissioner of family and community services under AS 12.47.090(b) or (c) may be conditionally released from confinement subject to the conditions and requirements for treatment that the court may impose, and placed under the supervision of the Department of Family and Community Services, a local government agency, a private agency, or an adult, who agrees to assume supervision of the defendant.

(b) The commissioner of family and community services or the commissioner's authorized representative shall submit, at a minimum, quarterly written reports to the court describing the defendant's progress in treatment, compliance with conditions of release, and other information required by the court for defendants conditionally released under this section.

(c) A person or agency responsible for supervision or treatment under an order for conditional release shall immediately notify the commissioner of family and community services upon the defendant's failure to appear for required medication or treatment, or for failure to comply with other conditions imposed by the court.

(d) If the court, after petition or on its own motion, reasonably believes that a conditionally released defendant is failing to adhere to the terms and conditions of the conditional release, the court may order that the conditionally released defendant be apprehended and held until a hearing can be scheduled with the court to determine the facts and whether or not the defendant's conditional release should be revoked or modified. Nothing in this subsection is intended to limit procedures available for emergency situations, including emergency detention under AS 47.30.705.

(e) The commissioner of family and community services or the conditionally released defendant may petition the court for modification of an order of conditional release. A petition by the defendant for modification of conditional release may not be filed more often than once every six months.

(f) A defendant conditionally released under AS 12.47.090(j) may petition the court for discharge in accordance with AS 12.47.090(e).

Sec. 12.47.095. Notice to victims.

(a) If an offender has been committed to the custody of the commissioner of family and community services under AS 12.47.090, the victim of that crime is entitled to notice of a pending or actual change in the status of the offender. The commissioner of family and community services shall give notice as required by this section if

(1) the offender has been continued in commitment following expiration of the maximum term of imprisonment under AS 12.47.090(f) and the commissioner gives notice of release of the offender;

(2) the court is to consider modification of an order of conditional release for the offender under AS 12.47.092(e);

(3) a court is to consider conditional release of the offender under AS 12.47.090(j) and 12.47.092(a);

(4) the offender petitions for discharge under AS 12.47.092(f); or

(5) the offender escapes, is released from custody on conditional release, furlough or authorized absence, or is discharged or released from custody for any reason.

(b) If a victim desires notice under this section, the victim shall maintain a current, valid mailing address on file with the commissioner of family and community services. The commissioner shall send the notice required by this section to the victim's last known address. The victim's address may not be disclosed to the offender or offender's attorney.

(c) The commissioner of family and community services is required to give notice of a change in the status of an offender under this section to any victim who has requested notice.

(d) If more than one person who qualifies as a victim under AS 12.55.185 desires notice, the commissioner of family and community services shall designate one person for purposes of receiving any notice required and exercising the rights granted by this section.

(e) A victim who has received notice under (a) of this section that a change in the status of the offender is pending before a court has the right to submit to the court a written statement, or to appear personally at a hearing to present a written statement, and to give sworn testimony or an unsworn oral presentation to the court.

(f) In this section,
(1) “offender” has the meaning given in AS 12.61.020;

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

Sec. 12.47.100. Incompetency to proceed.
(a) A defendant who, as a result of mental disease or defect, is incompetent because the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense may not be tried, convicted, or sentenced for the commission of a crime so long as the incompetency exists.

(b) If, before imposition of sentence, the prosecuting attorney or the attorney for the defendant has reasonable cause to believe that the defendant is presently suffering from a mental disease or defect that causes the defendant to be unable to understand the proceedings or to assist in the person's own defense, the attorney may file a motion for a judicial determination of the competency of the defendant. Upon that motion, or upon its own motion, the court, if justified by findings of fact and conclusions of law, shall have the defendant examined by at least one qualified psychiatrist or psychologist, who shall report to the court concerning the competency of the defendant. For the purpose of the examination, the court may order the defendant committed for a reasonable period to a suitable hospital or other facility designated by the court. If the report of the psychiatrist or psychologist indicates that the defendant is incompetent, the court shall hold a hearing, upon due notice, at which evidence as to the competency of the defendant may be submitted, including that of the reporting psychiatrist or psychologist, and make appropriate findings. Before the hearing, the court shall, upon request of the prosecuting attorney, order the defendant to submit to an additional evaluation by a psychiatrist or psychologist designated by the prosecuting attorney.

(c) A defendant is presumed to be competent. The party raising the issue of competency bears the burden of proving the defendant is incompetent by a preponderance of the evidence. When the court raises the issue of competency, the burden of proving the defendant is incompetent shall be on the party who elects to advocate for a finding of incompetency. The court shall then apply the preponderance of the evidence standard to determine whether the defendant is competent.

(d) A statement made by the defendant in the course of an examination into the person's competency under this section, whether the examination is with or without the consent of the defendant, may not be admitted in evidence against the defendant on the issue of guilt in a criminal proceeding unless the defendant later relies on a defense under AS 12.47.010 or 12.47.020. A finding by the judge that the defendant is competent to stand trial in no way prejudices the defendant in a defense based on insanity; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

(e) In determining whether a person has sufficient intellectual functioning to adapt or cope with the ordinary demands of life, the court shall consider whether the person has obtained a driver's license, is able to maintain employment, or is competent to testify as a witness under the Alaska Rules of Evidence.

(f) In determining if the defendant is unable to understand the proceedings against the defendant, the court shall consider, among other factors considered relevant by the court, whether the defendant understands that the defendant has been charged with a criminal offense and that penalties can be imposed; whether the defendant understands what criminal conduct is being alleged; whether the defendant understands the roles of the judge, jury, prosecutor, and defense counsel; whether the defendant understands that the defendant will be expected to tell defense counsel the circumstances, to the best of the defendant's ability, surrounding the defendant's activities at the time of the alleged criminal conduct; and whether the defendant can distinguish between a guilty and not guilty plea.

(g) In determining if the defendant is unable to assist in the defendant's own defense, the court shall consider, among other factors considered relevant by the court, whether the defendant's mental disease or defect affects the defendant's ability to recall and relate facts pertaining to the defendant's actions at times relevant to the charges and whether the defendant can respond coherently to counsel's questions. A defendant is able to assist in the defense even though the defendant's memory may be impaired, the defendant refuses to accept a course of action that counsel or the court believes is in the defendant's best interest, or the defendant is unable to suggest a particular strategy or to choose among alternative defenses.

(h) In a hearing to determine competency under this section, the court may, at the court's discretion, allow a witness, including a psychiatrist or psychologist who examined the defendant, to testify concerning the competency of the defendant by contemporaneous two-way video conference if the witness is in a place from which people customarily travel by air to the court, and the procedure allows the parties a fair opportunity to examine the witness. The video conference technician shall be the only person in the presence of the witness unless the court, at the court's discretion, determines that another person may be present. Any person present with the witness must be identified on the record. In this subsection, “contemporaneous two-way video conference”

(1) means a conference among people at different places by means of transmitted audio and video signals;

(2) includes all communication technologies that allow people at two or more places to interact by two-way video and audio transmissions simultaneously.

(i) The court may order a defendant to be examined under this section at an outpatient clinic or other facility as a condition of the defendant's release under AS 12.30. In considering the conditions of a defendant's release under this subsection, the court shall, in addition to any applicable requirement under AS 12.30, consider

(1) any medical information provided by the Department of Family and Community Services;

(2) the defendant's mental condition;

(3) the defendant's level of need for evaluation and treatment under this chapter;

(4) the defendant's ability to participate in outpatient treatment; and

(5) the defendant's history of evaluation and treatment under this chapter.

(j) If the defendant is charged with a felony offense against a person under AS 11.41 or felony arson, a qualified psychiatrist or psychologist conducting an examination under (b) of this section may, at the same time, evaluate the defendant to determine whether the defendant meets the standards for involuntary commitment under AS 47.30.700 — 47.30.915.

(k) In making findings of fact and conclusions of law under (b) of this section, a court may rely on a defense attorney's representation.

Sec. 12.47.110. Commitment on finding of incompetency.

(a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense, the court shall order the proceedings stayed, except as provided in (d) of this section, and shall commit a defendant charged with a felony, and may commit a defendant charged with any other crime, to the custody of the commissioner of family and community services or the commissioner's authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against the defendant are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment, the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If, at the expiration of the second 90-day period, the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice, and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 — 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice, and continued commitment proceedings shall be governed by the provisions relating to civil commitment under AS 47.30.700 — 47.30.915. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony or unclassified felony.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of the defendant's commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be

prohibited from standing trial, if the medication either enables the defendant to understand the proceedings and to properly assist in the defendant's defense or does not disable the defendant from understanding the proceedings and assisting in the defendant's own defense.

(e) A defendant charged with a felony and found to be incompetent to proceed under this section is rebuttably presumed to be mentally ill and to present a likelihood of serious harm to self or others in proceedings under AS 47.30.700 — 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the court may consider as recent behavior the conduct with which the defendant was originally charged.

(f) The court may order a defendant to receive further evaluation and treatment under (a) or (b) of this section at an outpatient clinic or other facility as a condition of the defendant's release under AS 12.30. In considering the conditions of a defendant's release under this subsection, the court shall, in addition to any applicable requirement under AS 12.30, consider

(1) any medical information provided by the Department of Family and Community Services;

(2) the defendant's mental condition;

(3) the defendant's level of need for evaluation and treatment under this chapter;

(4) the defendant's ability to participate in outpatient treatment; and

(5) the defendant's history of evaluation and treatment under this chapter.

(g) Before criminal charges against a defendant charged with a felony offense against a person under AS 11.41 or felony arson are dismissed under (b) of this section, the prosecutor shall

(1) file a petition seeking involuntary commitment of the defendant under AS 47.30.706 before dismissal of the charges;

(2) notify the division of the Department of Law that has responsibility for civil cases of the petition within 24 hours after filing the petition; and

(3) provide the court's findings to the division of the Department of Law that has responsibility for civil cases within 24 hours after the court's ruling.

Sec. 12.47.120. Determination of sanity after commitment.

(a) When, in the medical judgment of the custodian of an accused person committed under AS 12.47.110, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against the accused and to assist in the accused's own defense, appropriate criminal proceedings may be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.47.110.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility.

This finding may not be introduced in evidence on that issue or otherwise brought to the notice of the jury.

Sec. 12.47.130. Definitions.
In this chapter,

(1) “affirmative defense” has the meaning given in AS 11.81.900(b);

(2) “assist in the defendant's own defense” means to consult with a lawyer while exercising a reasonable degree of rational functioning;

(3) “culpable mental state” has the meaning given in AS 11.81.900(b);

(4) “incompetent” means a defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense;

(5) “mental disease or defect” means a disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; “mental disease or defect” also includes intellectual and developmental disabilities that result in significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life;

(6) “understand the proceedings against the defendant” means that the defendant's elementary mental process is such that the defendant has a reasonably rational comprehension of the proceedings.

Chapter 50. Witnesses.

Article 1. Uniform Act to Secure Attendance in Criminal Proceedings.
Sec. 12.50.010. Witness subpoenaed in this state to testify in another state.
(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within the state to attend and testify in this state certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person within this state is a material witness in that prosecution or grand jury investigation, and that the presence of that person will be required for a specified number of days, then, upon presentation of the certificate to a judge of a court of record in the judicial district in which the person is, the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the subpoena. In any such hearing the

certificate shall be prima facie evidence of all of the facts stated therein.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be immediately brought before the judge for said hearing; and if the judge at the hearing is satisfied of the desirability of the custody and delivery, for which determination the certificate shall be prima facie proof of this desirability, the judge may, in lieu of issuing subpoena, order that the witness be immediately taken into custody and delivered to an officer of the requesting state.

(d) If the witness who is subpoenaed as provided in this section, after being paid or tendered by a properly authorized person a sum equivalent to the cost of air fare round trip passage on a certificated carrier or such prepaid passage and reasonable incidental travel allowance for going to and from airports plus $20 per day for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of a witness who disobeys a subpoena issued from a court of record in this state.

Sec. 12.50.020. Witness from another state subpoenaed to testify in this state.
(a) If a person in a state which by its laws has made provision for commanding persons inside its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state as a material witness in a criminal action pending in a court of record of this state, or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure attendance in this state. This certificate shall be presented to a judge of a court of record in the county or judicial district in which the witness is found. This order of a court in the other state delivering custody of a witness to an officer of this state shall be sufficient authority to an officer of this state to take the witness into custody and hold the witness until discharged by a court of this state.

(b) If the witness is subpoenaed to attend and testify in this state the witness shall be tendered a sum equivalent to the cost of air fare round trip passage on a certificated carrier or such prepaid passage and reasonable incidental travel allowance for going to and from airports plus $20 per day for each day that the witness is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within the state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If the witness, after coming into this state, fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

Sec. 12.50.030. Immunity of witness from arrest or service of process.
If a person comes into this state in obedience to a subpoena directing the person to attend and testify in this state, the person shall not, while in this state pursuant to the subpoena, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before entering this state under the subpoena.

Sec. 12.50.040. Immunity of foreign witness passing through state from arrest or process.
If a person passes through this state while going to another state in obedience to a subpoena to attend and testify in that state or while returning therefrom, the person shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before entering this state under the subpoena.

Sec. 12.50.050. Party seeking witness.
The right to obtain witnesses under AS 12.50.010 — 12.50.080 in criminal proceedings shall extend to the state or a defendant. Witness fees shall be paid by the party calling the witness, except as provided in Rule 17(b), Alaska Rules of Criminal Procedure. If the time estimate in the certificate of the requesting court is exceeded, the nonindigent defendant shall be required to tender additional per diem or post bond to insure payment of total witness fees.

Sec. 12.50.060. Uniformity of interpretation.
AS 12.50.010 — 12.50.080 shall be so interpreted and construed as to effectuate the general purpose to make uniform the laws of the states which enact similar legislation.

Sec. 12.50.070. Definitions.
In AS 12.50.010 — 12.50.080,
(1) “state” means a state, territory of the United States, and the District of Columbia;

(2) “subpoena” includes a summons in a state where a summons is used in lieu of subpoena, order, or other notice requiring the appearance of a witness; the word subpoena also includes a subpoena duces tecum;

(3) “witness” includes a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

Sec. 12.50.080. Short title.
AS 12.50.010 — 12.50.080 may be cited as the Uniform Act to Secure Attendance of Witnesses in Criminal Proceedings.

Secs. 12.50.090 — 12.50.100. Material witnesses. [Repealed, § 2 ch 20 SLA 1966. For current law, see AS 12.30.050.]
For current law, see AS 12.30.050.

For current law, see AS 12.30.050.

Article 2. Witness Immunity.
Sec. 12.50.101. Immunity of witnesses.
(a) If a witness refuses, on the basis of the privilege against self-incrimination, to testify or provide other information in a criminal proceeding before or ancillary to a court or grand jury of this state, and a judge issues an order under (b) of this section, the witness may not refuse to

comply with the order on the basis of the privilege against self-incrimination. If the witness fully complies with the order, the witness may not be prosecuted for an offense about which the witness is compelled to testify, except in a prosecution based on perjury, giving a false statement or otherwise knowingly providing false information, or hindering prosecution.

(b) In the case of an individual who has been or may be called to testify or provide other information in a criminal proceeding before or ancillary to a court or a grand jury of this state, a superior or district court for the judicial district in which the proceeding is or may be held shall issue, upon the application of the attorney general or the attorney general's designee in accordance with (d) of this section, an order requiring the individual to give testimony or provide other information that the individual refuses to give or provide based on the privilege against self-incrimination.

(c) An order issued under (b) of this section is effective when communicated to the individual specified in the order.

(d) The attorney general or the attorney general's designee may apply for an order under (b) of this section when, in the judgment of the attorney general or the attorney general's designee,

(1) the testimony or other information may be necessary to the administration of criminal justice; and

(2) the individual who is the subject of the application has refused or is likely to refuse to testify or to provide other information on the basis of the privilege against self-incrimination.

(e) If a witness refuses, or there is reason to believe the witness will refuse, to testify or provide other information based on the privilege against self-incrimination, and if the attorney general or the attorney general's designee has not applied for an order under (b) of this section, the court shall inform the witness of the right to be represented by an attorney, and that an attorney will be appointed for the witness if the witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to allow the witness to consult with the attorney for the witness.

(f) If the attorney general or the attorney general's designee declines to seek an order under (b) of this section after the witness has had an opportunity to consult with an attorney, and the witness continues to refuse to testify or provide other information, the court shall hold a hearing to determine the validity of the claim of privilege by the witness. The hearing shall be in camera.

(g) At the hearing under (f) of this section, the attorney for the witness, in the form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. The proffer is privileged and inadmissible for any other purpose. If the proffer establishes a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

(h) If the court finds that the witness has a valid claim of privilege, it shall advise an attorney designated by the attorney general of that finding and inform the attorney of the category or categories of offense to which the privilege applies: a higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney decides that granting immunity to the witness is appropriate, the designated attorney shall inform the prosecution of that decision, and shall deliver or cause to be delivered a letter to the witness, or an attorney for the witness, granting immunity to the witness. The designated attorney may not disclose the category of offense to anyone.

(i) In this section,

(1) “higher-level felony” means an unclassified or class A felony;

(2) “lower-level felony” means a class B or class C felony;

(3) “other information” means books, papers, documents, records, recordings, or other similar material;

(4) “proffer” means a written or oral statement by the attorney for the witness, stating the attorney's good faith belief of the substance of the witness's testimony or other information.

Article 3. Temporary Detention and Identification of Persons.

Sec. 12.50.201. Temporary detention and identification of persons.

(a) A peace officer may temporarily detain a person under circumstances that give the officer reasonable suspicion that

(1) the person witnessed or was at or near the scene of the commission of a felony crime against a person under AS 11.41, arson under AS 11.46.400 or 11.46.410, criminal mischief under AS 11.46.475 or 11.46.480, or misconduct involving weapons under AS 11.61.190 or 11.61.195(a)(3);

(2) the person has information of material aid in the investigation of that crime; and

(3) the temporary detention of the person is reasonably necessary to obtain or verify the identification of the person, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.

(b) A peace officer who temporarily detains a person under (a) of this section may

(1) detain the person only as long as reasonably necessary to accomplish the purposes of that subsection;

(2) take one or more photographs of the person, if photographs can be taken without unreasonably delaying the person or removing the person from the vicinity; and

(3) if the person does not provide valid government-issued photographic identification or other valid identification that the officer finds to be reliable to identify the person, or the officer has reasonable suspicion that the identification is not valid,

(A) serve a subpoena on the person to appear before the grand jury where the crime was committed; and

(B) take the person's fingerprint impressions if

(i) the crime under investigation is murder, attempted murder, or misconduct involving weapons under AS 11.61.190 or 11.61.195(a)(3); and

(ii) fingerprint impressions can be taken without unreasonably delaying the person or removing the person from the vicinity.

(c) A peace officer electing to serve a subpoena under (b) of this section may not require the person to sign the subpoena or another document. The officer or the subpoena must advise the person that failure to honor the subpoena may be punishable as criminal contempt of court under AS 09.50.010. A person receiving a subpoena to testify under (b) of this section may request the district attorney to withdraw the subpoena if, before the grand jury proceeding for which the

person has been served a subpoena to appear, the person provides the peace officer who served the subpoena or the lead investigator with valid government-issued photographic identification or other valid identification that the officer or lead investigator finds to be reliable to identify the person.

(d) Photographs or fingerprints taken under (b) of this section

(1) may be used for identification purposes only, and not for criminal investigative purposes unless it is determined that the person is suspected of committing a crime within the scope of the investigation; and

(2) must be destroyed upon the earlier of the following occurrences unless it is determined that the person is suspected of committing a crime within the scope of the investigation:

(A) the person has testified in a grand jury or court proceeding in connection with the matter under investigation; or

(B) completion of the prosecution of the crime being investigated.

(e) This section does not limit the authority of peace officers to investigate crimes, to collect evidence, to photograph crime scenes, evidence, or bystanders, to issue lawful court process, or to ensure the welfare of crime victims or other persons.

(f) A person who refuses or resists the taking of photographs or fingerprints under this section commits a class B misdemeanor, punishable as provided in AS 12.55, except that a sentence of imprisonment, if imposed, may not exceed 10 days.

(g) Notwithstanding (f) of this section, if the person establishes that the person does not have information of material aid in the investigation of the crime, it is within the discretion of the court to determine that this is a civil matter punishable by a civil fine of not more than $1,000.

Chapter 55. Sentencing and Probation.

Sec. 12.55.005. Declaration of purpose.

The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

(1) the seriousness of the defendant's present offense in relation to other offenses;

(2) the prior criminal history of the defendant and the likelihood of rehabilitation;

(3) the need to confine the defendant to prevent further harm to the public;

(4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;

(5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct;

(6) the effect of the sentence to be imposed as a community condemnation of the criminal act

and as a reaffirmation of societal norms; and

(7) the restoration of the victim and the community.

Sec. 12.55.010. Imprisonment on judgment for payment of fine. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.035(a).]

Sec. 12.55.011. Victim and community involvement in sentencing.

(a) A court, when considering the sentence to be imposed under this chapter for an offense other than a violation of AS 11.41, AS 11.46.400, or a crime involving domestic violence, may permit the victim and the offender to submit a sentence for the court's review based upon a negotiated agreement between the victim and the offender, or between the offender and the community if there is no victim. The court may, with the consent of the victim and the offender, impose the sentence that has been determined by the negotiated agreement between the offender and the victim, or between the offender and the community if there is no victim, if that sentence otherwise complies with this chapter and accomplishes the goals of restoration of the victim and the community and rehabilitation of the offender. Before accepting a negotiated agreement, the court shall determine that the victim has not been intimidated or coerced in reaching the agreement. In this section, “community” has the meaning determined by the court.

(b) At the time of sentencing, the court shall, if practicable, provide the victim with a form that

(1) provides information on

(A) whom the victim should contact if the victim has questions about the sentence or release of the offender;

(B) the potential for release of the offender on furlough, probation, or parole or for good time credit; and

(2) allows the victim to update the victim's contact information with the court, the Victim Information and Notification Everyday service, and the Department of Corrections.

Sec. 12.55.015. Authorized sentences; forfeiture.

(a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend entry of judgment under AS 12.55.078 or suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged;

(13) order the defendant to refrain from consuming alcoholic beverages for a period of time.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty. When forfeiting property under this subsection, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth $5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than $5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

(d) [Repealed, § 12 ch 188 SLA 1990.]

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term

(1) in a correctional restitution center;

(2) by electronic monitoring.

(f) Notwithstanding (a) of this section, the court shall order the forfeiture to the commissioner of

public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence.

(g) Unless a defendant is ineligible for a deduction under AS 33.20, when a defendant is sentenced to a term of imprisonment of two years or more, the sentence consists of two parts: (1) a minimum term of imprisonment that is equal to not less than two-thirds of the total term of imprisonment; and (2) a maximum term of supervised release on mandatory parole that is equal to not more than one-third of the total term of imprisonment; the amount of time that the inmate actually serves in imprisonment and on supervised release is subject to the provisions of AS 33.20.010 — 33.20.060.

(h) In addition to penalties authorized by this section, the court shall order a person convicted of an offense requiring the state to collect a blood sample, oral sample, or both, for the deoxyribonucleic acid identification registration system under AS 44.41.035 to submit to the collection of

(1) the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples; or

(2) an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer.

(i) In addition to penalties authorized by this section, the court may order a defendant convicted of a violation of AS 11.41.410 or 11.41.434 where the victim of the offense was under 13 years of age to be subject to electronic monitoring up to the maximum length of probation on the person's release from a correctional facility.

(j) Nothing in (a)(13) of this section limits or restricts the authority of a court to order a person to refrain from the consumption of alcohol as a condition of sentence or probation.

(k) In making a determination under (a)(12) of this section for a defendant convicted of a crime involving a sex offense as defined in AS 12.63.100 or a crime involving domestic violence as defined in AS 18.66.990, there is a presumption that, unless the court finds on the record that contact between a defendant and the victim of the offense is necessary, the court shall order the defendant to have no contact, either directly or indirectly, with the victim until the defendant is unconditionally discharged.

(l) In this section “deadly weapon” has the meaning given in AS 11.81.900.

Sec. 12.55.020. Enforcing judgment to pay money. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 12.55.025(f), AS 12.55.035(a), (d) and AS 12.55.051.]

Sec. 12.55.022. Victim impact statement.

As part of the presentence report prepared on each felony offender, the probation officer shall prepare a victim impact statement reporting the following information:

(1) the financial, emotional, and medical effects of the offense on the victim;

(2) the need of the victim for restitution; and

(3) any other information required by the court.

Sec. 12.55.023. Participation by victim in sentencing.

(a) If a victim requests, the prosecuting attorney shall provide the victim, before the sentencing hearing, with a copy of the following portions of the presentence report:

(1) the summary of the offense prepared by the Department of Corrections;

(2) the defendant's version of the offense;

(3) all statements and summaries of statements of the victim;

(4) the sentence recommendation of the Department of Corrections; and

(5) letters of support submitted to the court for consideration.

(b) A victim may submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision and may give sworn testimony or make an unsworn oral presentation to the court at the sentencing hearing. If there are numerous victims, the court may reasonably limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing. When requested by the victim of a felony or a class A misdemeanor, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, when the victim does not submit a statement, give testimony, or make an oral presentation, the victims' advocate may submit a written statement or make an unsworn oral presentation at the sentencing hearing on behalf of the victim.

Sec. 12.55.025. Sentencing procedures.

(a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; if a term of imprisonment is imposed, the statement must include

(A) the approximate minimum term the defendant is expected to serve before being released or placed on mandatory parole if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary parole;

(4) any recommendations as to the place of confinement or the manner of treatment; and

(5) in the case of a conviction for a felony offense, information assessing

(A) the financial, emotional, and medical effects of the offense on the victim;

(B) the need of the victim for restitution; and

(C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence unless the court specifically provides that the defendant must report to serve the sentence on another date. If the court provides another date to begin the term of confinement, the court shall provide the defendant with written notice of the date, time, and location of the correctional facility to which the defendant must report. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which the sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) [Repealed, § 7 ch 125 SLA 2004.]
(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) [Repealed, § 7 ch 125 SLA 2004.]
(h) [Repealed, § 7 ch 125 SLA 2004.]
(i) Except as otherwise provided in this chapter, the preponderance of the evidence standard of proof applies to sentencing proceedings.

(j) The approximate minimum terms provided under (a)(3) of this section in the sentencing report are for information purposes only. The approximate minimum terms are not part of the sentence imposed and do not form a basis for review or appeal of the sentence imposed or provide a defendant with a right to any specific term of imprisonment or supervised release on mandatory parole.

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (l) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(l) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to

the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except for good cause, the court may not consider a request for credit made under this subsection after the deadline.

(m) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or, upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall orally state on the record the terms of the sentence of imprisonment imposed and the approximate minimum sentence that must be served before the defendant may be eligible for mandatory parole and that the period of active incarceration may be reduced under other provisions of law.

Sec. 12.55.027. Credit for time spent toward service of a sentence of imprisonment.
(a) A court may grant a defendant credit toward a sentence of imprisonment for time spent in a treatment program that furthers the reformation and rehabilitation of the defendant if the court finds that the program places a substantial restriction on the defendant's freedom of movement and behavior and is consistent with this section.

(b) A court may only grant credit under this section
(1) in the amount of one day of credit toward a sentence of imprisonment for each full day the defendant spent in a treatment program; and

(2) if the court ordered the defendant to participate in and comply with the conditions of the treatment program before the defendant entered the program.

(c) In granting credit toward a sentence of imprisonment for time spent in a treatment program, a court shall consider the following factors:
(1) the restrictions on the defendant's freedom of movement and behavior;

(2) the circumstances under which the defendant was enrolled in the program;

(3) the residency requirements of the program;

(4) the physical custody and supervision of the defendant at the program;

(5) the circumstances under which the defendant is permitted to leave the program's facility;

(6) the rules of the program and the requirement that the defendant obey the orders of persons who have immediate custody or control over the defendant;

(7) the sanctions on the defendant for violating the program's rules or orders;

(8) whether the defendant is subject to arrest for leaving the program's facility without permission;

(9) the use of an electronic monitoring device;

(10) whether the program provides substance abuse treatment;

(11) the use of other technology that monitors or restricts the defendant's movement and behavior;

(12) other factors that support the court's finding that the program places a substantial restriction on the defendant's freedom of movement and behavior;

(13) other factors that support the court's finding that the program furthers the reformation and rehabilitation of the defendant.

(d) A court may grant credit against a sentence of imprisonment for time spent under electronic monitoring if the person has not committed a criminal offense while under electronic monitoring and the court imposes restrictions on the person's freedom of movement and behavior while under the electronic monitoring program, including requiring the person to be confined to a residence except for a

(1) court appearance;

(2) meeting with counsel; or

(3) period during which the person is at a location ordered by the court for the purposes of employment, attending educational or vocational training, performing community volunteer work, or attending a rehabilitative activity or medical appointment.

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

(f) To qualify as a treatment program under this section, a program must

(1) be intended to address criminogenic traits or behaviors;

(2) provide measures of progress or completion; and

(3) require notification to the prosecuting authority, pretrial services officer, or probation officer if the person is discharged from the program for noncompliance.

(g) Unless the defendant participated in a residential treatment program under (c) and (f) of this section while under electronic monitoring, a court may not grant credit against a sentence of imprisonment under (d) of this section if the sentence is for

(1) a felony crime against a person under AS 11.41;

(2) a crime involving domestic violence as defined in AS 18.66.990;

(3) an offense under AS 11.71 involving the delivery of a controlled substance to a person under 19 years of age;

(4) burglary in the first degree under AS 11.46.300; or

(5) arson in the first degree under AS 11.46.400.

(h) Nothing in this section authorizes the release of a person on electronic monitoring after conviction and while awaiting sentencing if the person is ineligible for release under AS 12.30.040(b).

(i) A court may not grant credit under this section for time spent in a treatment program or under electronic monitoring for a sex offense as defined in AS 12.63.100.

(j) A court may grant credit under this section for time spent in a treatment program or under electronic monitoring if the court finds that the sentence, including credit toward the sentence of imprisonment, meets the requirements of AS 12.55.005.

(k) When a court grants credit toward a sentence of imprisonment under this section, if a defendant spends time in a treatment program while under electronic monitoring, the court may grant credit for either the time spent in the treatment program or for the time spent under electronic monitoring, but not for both.

(l) A court granting credit against a sentence of imprisonment under (a) of this section may grant credit of not more than 365 days against the total term of imprisonment imposed.

Sec. 12.55.030. Discharge of indigents imprisoned for nonpayment of fine. [Repealed, § 16 ch 53 SLA 1973.]

Sec. 12.55.035. Fines.

(a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of not more than

(1) $500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a minor in the first degree, kidnapping, sex trafficking in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) $250,000 for a class A felony;

(3) $100,000 for a class B felony;

(4) $50,000 for a class C felony;

(5) $25,000 for a class A misdemeanor;

(6) $2,000 for a class B misdemeanor;

(7) $500 for a violation.

(c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greatest of

(1) an amount that is

(A) $2,500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $500,000 for a class A misdemeanor offense that does not result in death;

(C) $75,000 for a class B misdemeanor offense that does not result in death;

(D) $25,000 for a violation;

(2) three times the pecuniary gain
(A) realized by the defendant as a result of the offense; or

(B) sought by the defendant for the defendant or for others by the commission of the offense; or

(3) three times the pecuniary damage or loss
(A) caused by the defendant to another, or to the property of another, as a result of the offense; or

(B) to another or the property of another sought by the defendant by the commission of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider
(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

(g) Fines imposed and collected under this section shall be separately accounted for under AS 37.05.142.

(h) [Repealed, § 5 ch 110 SLA 2010.]

Sec. 12.55.036. Day fines. [Repealed, § 4 ch 33 SLA 2009.]
Sec. 12.55.039. Surcharge.
(a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a
(1) felony shall be assessed a surcharge of $200;

(2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and adopted under AS 28.01.010, shall be assessed a surcharge of $150;

(3) misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be

imposed for the misdemeanor or ordinance violation, other than a provision identified in (2) of this subsection, shall be assessed a surcharge of $100;

(4) misdemeanor for which a sentence of incarceration may not be imposed, a violation or an infraction under state law, or a violation of a municipal ordinance imposing a penalty authorized by AS 29.25.070(a) if a sentence of incarceration may not be imposed for the ordinance violation, shall be assessed a surcharge of $20 if the fine or bail forfeiture amount for the offense is $30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142.

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.041. Correctional facility surcharge.

(a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, or is convicted of, a crime under state law shall pay a correctional facility surcharge if, in connection with the crime, the defendant

(1) was arrested and taken to a correctional facility, regardless of whether the defendant was released or admitted to the facility; or

(2) is sentenced to serve a term of imprisonment.

(b) The court shall impose a single surcharge under (a) of this section on a defendant being sentenced for one or more crimes in a single judgment. The surcharge is

(1) $100 if the judgment includes a sentence for a felony;

(2) $50 if the judgment does not include a sentence for a felony.

(c) If the court places the defendant on probation, the court shall order that the defendant pay an additional correctional facility surcharge of $100. The additional surcharge shall be suspended but later imposed if the defendant's probation is revoked and, in connection with the probation revocation, the defendant

(1) was arrested and taken to a correctional facility, regardless of whether the defendant was released or admitted to the facility; or

(2) is ordered to serve a term of imprisonment for the probation revocation.

(d) The court shall include a surcharge imposed under (a) of this section in the judgment of conviction. The court shall include the imposition of a surcharge under (c) of this section in the order revoking probation. For a surcharge that is not paid by the person as required by this

section, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.140. For purposes of collection and priority of attachment under AS 43.23.140, a surcharge imposed under this section is accounted for in the same manner as a cost of imprisonment under AS 28.35.030(k) and 28.35.032(o). The state may enforce payment of a surcharge under this section under AS 09.35 as if it were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce surcharges.

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

Sec. 12.55.045. Restitution and compensation.
(a) The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. The court shall, when presented with credible evidence, unless the victim expressly declines restitution, also order a defendant convicted of an offense to compensate a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime. In determining the amount and method of payment of restitution or compensation, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If the defendant fails to make one or more payments required under this section, the victim or the state on the victim's behalf may enforce the total amount remaining under the order of restitution as provided in (l) of this section.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss, and the order of restitution may include compensation for loss of income.

(e) [Repealed, § 7 ch 17 SLA 2004.]
(f) [Repealed, § 7 ch 17 SLA 2004.]
(g) The court may not, in ordering the amount of restitution, consider the defendant's ability to pay restitution.

(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of

restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under AS 12.55.085, the order of restitution is a condition of the suspended imposition of sentence.

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

(k) The court, on its own motion or at the request of the prosecuting authority or probation officer, may order a defendant on probation who has been ordered to pay restitution to submit financial information to the court using the form specified in (j) of this section. The defendant shall file the completed form with the court within five days after the court's order. The defendant shall provide a copy of the completed form to the prosecuting authority and the person's probation officer, if any.

(l) An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. An order by the court that the defendant pay restitution when the court suspends entry of judgment under AS 12.55.078 or suspends imposition of sentence under AS 12.55.085 is a civil judgment for the amount of the restitution and remains enforceable and is not discharged when the proceeding is dismissed under AS 12.55.078 or a conviction is set aside under AS 12.55.085. The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the victim's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.

(m) Notwithstanding another provision of law, the court shall accept
(1) payments of restitution from a defendant at any time; and

(2) prepayments of restitution or payments in anticipation of an order of restitution.

(n) In determining the amount of actual damages or loss for restitution under this section, the court shall value property as the market value of the property at the time and place of the crime or, if the market value cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(o) In this section,
(1) “conviction” means that the defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury;

(2) “loss of income” includes the total loss of income a business or person suffers as a result of not having stolen property available during the time it takes to obtain a replacement.

Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. [Repealed, § 21 ch 166 SLA 1978. For sentences of imprisonment for felonies, see AS 12.55.125.]

Sec. 12.55.051. Enforcement of fines and restitution.

(a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts to pay the fine or restitution. If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay. If the court does not find that the default was attributable to the defendant's inability to pay despite having made continuing good faith efforts to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each $50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If, at a hearing under this subsection, the defendant proves by a preponderance of the evidence that the defendant will be unable through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court may reduce the fine ordered, change the payment schedule, or otherwise modify the order. The court may not reduce an order of restitution but may change the payment schedule.

(d) The state may enforce payment of a fine against a defendant under AS 09.35 as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines.

(e) The Department of Law is authorized to collect restitution on behalf of the recipient unless

(1) the recipient elects as provided in (f) of this section to enforce the order of restitution without the assistance of the Department of Law; or

(2) the order requires restitution to be made in a form other than payment of a specific dollar amount.

(f) The court shall forward a copy of an order of restitution to the Department of Law and the office of victims' rights when the judgment is entered. Along with the copy of the order, the court shall provide the name, date of birth, social security number, and current address of the recipient of the restitution and the defendant, to the extent that the court has that information in its possession. Upon receipt of the order and other information from the court, the Department of Law shall send a notice to the recipient regarding the recipient's rights under this section, including the right to elect to enforce the order of restitution without the assistance of the Department of Law and of the possibility of, and procedure for, receiving payment from the

restorative justice account. The information provided to the Department of Law and the office of victims' rights under this subsection is confidential and is not open to inspection as a public record under AS 40.25.110. The Department of Law, the office of victims' rights, or agents for the Department of Law or office of victims' rights may not disclose the information except as necessary to collect on the restitution.

(g) The Department of Law may not begin collection procedures on the order of restitution until the recipient has been given notice and has been given 90 days after receipt of notice to elect to collect the restitution without the assistance of the Department of Law. If the Department of Law receives a response to the notice before the 90-day period, the Department of Law may begin collection on the restitution. A recipient may inform the Department of Law at a later time of the recipient's election to collect the restitution without the assistance of the Department of Law; upon receipt of that information, the Department of Law may no longer proceed with collection efforts on behalf of the recipient. A recipient who has elected under this section to collect restitution without the assistance of the Department of Law may not later request the services of that department to collect the restitution.

(h) If the Department of Law or its agents proceed to collect restitution on behalf of a recipient under (g) of this section, the actions of the Department of Law or an agent of the Department of Law on behalf of the recipient do not create an attorney-client relationship between the Department of Law and the recipient. The Department of Law or its agents may not settle a judgment for restitution without the consent of the recipient of the restitution.

(i) An action for damages may not be brought against the state or any of its agents, officers, or employees based on an action or omission under this section.

(j) The Department of Law may enter into contracts on behalf of the state to carry out the collection procedures of this section. The Department of Law may adopt regulations necessary to carry out the collection procedures of this section, including the reimbursement of attorney fees and costs in appropriate cases.

Sec. 12.55.055. Community work.

(a) The court may order a defendant convicted of an offense to perform community work as a condition of probation, a suspended sentence, suspended imposition of sentence, or suspended entry of judgment, or in addition to any fine or restitution ordered. If the defendant is sentenced to imprisonment, the court may recommend to the Department of Corrections that the defendant perform community work.

(b) Community work includes work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public lands, forests, parks, roads, highways, facilities, or education. Community work may not confer a private benefit on a person except as may be incidental to the public benefit.

(c) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a fine, surcharge, or portion of a fine or surcharge if the court finds the defendant is unable to pay the fine. The value of community work in lieu of a fine is the state's minimum wage for each hour.

(d) The court may offer a defendant convicted of an offense the option of performing community work in lieu of a sentence of imprisonment. Substitution of community work shall be at a rate of eight hours for each day of imprisonment. A court may not offer substitution of community work

for any mandatory minimum period of imprisonment or for any period within the presumptive range of imprisonment for the offense.

(e) Medical benefits for an individual injured while performing community work at the direction of the state shall be assumed by the state to the extent not covered by collateral sources. When the state pays medical benefits under this subsection, a claim for medical expenses by the injured individual against a third party is subrogated to the state.

(f) [Repealed, § 11 ch 71 SLA 1996.]
(g) The court may not
(1) offer a defendant convicted of an offense the option of serving jail time in lieu of performing uncompleted community work previously ordered by the court; or

(2) convert uncompleted community work hours into a sentence of imprisonment.

(h) If a court orders community work as part of the defendant's sentence under this section, the court shall provide notice to the defendant at sentencing and include as a provision of the judgment that if the defendant fails to provide proof of community work within 20 days after the date set by the court, the court shall convert those community work hours to a fine equal to the number of uncompleted work hours multiplied by the state's minimum hourly wage and issue a judgment against the defendant for that amount.

Secs. 12.55.060 — 12.55.075. Prior convictions; sentencing reports; imposition of sentence. [Repealed, § 21 ch 166 SLA 1978.]
Sec. 12.55.078. Suspending entry of judgment.
(a) Except as provided in (f) of this section, if a person is found guilty or pleads guilty to a crime, the court may, with the consent of the defendant and the prosecution and without imposing or entering a judgment of guilt, defer further proceedings and place the person on probation. The period of probation may not exceed the applicable terms set out in AS 12.55.090(c). The court may not impose a sentence of imprisonment under this subsection.

(b) The court shall impose conditions of probation for a person on probation as provided in (a) of this section, which may include that the person
(1) abide by all local, state, and federal laws;

(2) not leave the state without prior consent of the court;

(3) pay restitution as ordered by the court; and

(4) obey any other conditions of probation set by the court.

(c) At any time during the probationary term of the person released on probation, a probation officer may, without warrant or other process, rearrest the person so placed in the officer's care and bring the person before the court, or the court may, in its discretion, issue a warrant for the rearrest of the person. The court may revoke and terminate the probation if the court finds that the person placed on probation is
(1) violating the conditions of probation;

(2) engaging in criminal practices; or

(3) violating an order of the court to participate in or comply with the treatment plan of a

rehabilitation program under AS 12.55.015(a)(10).

(d) If the court finds that the person has successfully completed probation, the court shall, at the end of the probationary period set by the court, or at any time after the expiration of one year from the date the original probation was imposed, discharge the person and dismiss the proceedings against the person. A person who is discharged under this subsection is not convicted of a crime.

(e) If the court finds that the person has violated the conditions of probation ordered by the court, the court may revoke and terminate the person's probation, enter judgment on the person's previous plea or finding of guilt, and pronounce sentence at any time within the maximum probation period authorized by this section.

(f) The court may not suspend the imposition or entry of judgment and may not defer prosecution under this section of a person who

(1) is charged with a violation of AS 11.41.100 — 11.41.220, 11.41.260 — 11.41.320, 11.41.360 — 11.41.370, 11.41.410 — 11.41.530, AS 11.46.400, AS 11.61.125 — 11.61.128, or AS 11.66.110 — 11.66.135;

(2) uses a firearm in the commission of the offense for which the person is charged;

(3) has previously been granted a suspension of judgment under this section or a similar statute in another jurisdiction, unless the court enters written findings that by clear and convincing evidence the person's prospects for rehabilitation are high and suspending judgment under this section adequately protects the victim of the offense, if any, and the community;

(4) is charged with a violation of AS 11.41.230, 11.41.250, or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if

(A) the charges were dismissed under this section;

(B) the conviction has been set aside under AS 12.55.085; or

(C) the charge or conviction was dismissed or set aside under an equivalent provision of the laws of another jurisdiction; or

(5) is charged with a crime involving domestic violence, as defined in AS 18.66.990.

Sec. 12.55.080. Suspension of sentence and probation.
Upon entering a judgment of conviction of a crime, or at any time within 60 days from the date of entry of that judgment of conviction, a court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution or balance of the sentence or a portion thereof, and place the defendant on probation for a period and upon the terms and conditions as the court considers best.

Sec. 12.55.085. Suspending imposition of sentence.
(a) Except as provided in (f) of this section, if it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its

discretion, suspend the imposition of sentence and may direct that the suspension continue for a period of time, not exceeding the maximum term of sentence that may be imposed or a period of one year, whichever is greater, and upon the terms and conditions that the court determines, and shall place the person on probation, under the charge and supervision of the probation officer of the court during the suspension.

(b) At any time during the probationary term of the person released on probation, a probation officer may, without warrant or other process, rearrest the person so placed in the officer's care and bring the person before the court, or the court may, in its discretion, issue a warrant for the rearrest of the person. The court may revoke and terminate the probation if the interests of justice require, and if the court, in its judgment, has reason to believe that the person placed upon probation is

(1) violating the conditions of probation;

(2) engaging in criminal practices; or

(3) violating an order of the court to participate in or comply with the treatment plan of a rehabilitation program under AS 12.55.015(a)(10).

(c) Upon the revocation and termination of the probation, the court may pronounce sentence at any time within the maximum probation period authorized by this section, subject to the limitation specified in AS 12.55.086(c).

(d) The court may at any time during the period of probation revoke or modify its order of suspension of imposition of sentence. It may at any time, when the ends of justice will be served, and when the good conduct and reform of the person held on probation warrant it, terminate the period of probation and discharge the person held. If the court has not revoked the order of probation and pronounced sentence, the defendant shall, at the end of the term of probation, be discharged by the court.

(e) Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect.

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 — 11.41.220, 11.41.260 — 11.41.320, 11.41.360 — 11.41.370, 11.41.410 — 11.41.530, AS 11.46.400, AS 11.61.125 — 11.61.128, or AS 11.66.110 — 11.66.135;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 — 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

Sec. 12.55.086. Imprisonment as a condition of suspended imposition of sentence.

(a) When the imposition of sentence is suspended under AS 12.55.085, the court may require, as a special condition of probation, that the defendant serve a definite term of continuous or periodic imprisonment, not to exceed the maximum term of imprisonment that could have been imposed.

The court may recommend that the defendant serve all or part of the term in a correctional restitution center.

(b) A defendant imprisoned under this section is entitled to a deduction from the term of imprisonment for good conduct under AS 33.20.010. Unless otherwise specified in the order of suspension of imposition of sentence, a defendant imprisoned under this section is eligible for parole if the term of imprisonment exceeds one year and is eligible for any work furlough, rehabilitation furlough, or similar program available to other state prisoners.

(c) If probation is revoked and the defendant is sentenced to imprisonment, the defendant shall receive credit for time served under this section. Deductions for good conduct under AS 33.20.010 do not constitute "time served."

Sec. 12.55.088. Modification of sentence.
(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.

(b) The sentencing court may not be required to entertain a second or successive motion for similar relief brought under (a) of this section on behalf of the same prisoner.

(c) A sentence may not be reduced or modified so as to result in a term of imprisonment that is less than the minimum sentence or lower than the presumptive range required by law for the original sentence.

(d) A victim has the right to comment in writing to the court on a motion to modify or reduce a sentence filed by the person who perpetrated the offense against the victim, and has the right to give sworn testimony or make an unsworn oral presentation at a hearing held in connection with the motion. If there are numerous victims, the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing.

(e) If a motion is filed to modify or reduce a sentence by a defendant who perpetrated a crime against a person or arson in the first degree, the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing or briefing deadline to enable the department to notify the victim of that crime. If that victim has earlier requested to be notified, the Department of Corrections shall send the victim a copy of the motion and inform the person of that person's rights under this section, the deadline for receipt of written comments, the hearing date, and the court's address.

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

(g) In deciding whether to modify or reduce a sentence, the court shall consider the victim's comments, testimony, or unsworn oral presentation, when relevant, and any response by the prosecuting attorney and the person filing the motion.

(h) If a victim desires notice under this section, the victim shall maintain a current, valid mailing address on file with the commissioner of corrections. The commissioner shall send the notice to the victim's last known address. The victim's address may not be disclosed to the offender or to the offender's attorney.

Sec. 12.55.090. Granting of probation.

(a) Probation may be granted whether the offense under AS 11 or AS 16 or the crime is punishable by fine or imprisonment or both. If an offense under AS 11 or AS 16 or a crime is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

(b) Except as otherwise provided in (f) of this section, the court may revoke or modify any condition of probation, change the period of probation, or terminate probation and discharge the defendant from probation.

(c) The period of probation, together with any extension, may not exceed

(1) 25 years for a felony sex offense; or

(2) 10 years for any other offense.

(d) [Repealed, § 11 ch 68 SLA 1965.]

(e) [Repealed, § 11 ch 68 SLA 1965.]

(f) Unless the defendant and the prosecuting authority agree at the probation revocation proceeding or other proceeding related to a probation violation, the person qualifies for a reduction under AS 33.05.020(h), or a probation officer recommends to the court that probation be terminated and the defendant be discharged from probation under (g) of this section or AS 33.05.040, the court may not reduce the specific period of probation or the specific term of suspended incarceration except by the amount of incarceration imposed for a probation violation, if

(1) the sentence was imposed in accordance with a plea agreement under Rule 11, Alaska Rules of Criminal Procedure; and

(2) the agreement required a specific period of probation or a specific term of suspended incarceration.

(g) At the discretion of the probation officer, a probation officer may recommend to the court that probation be terminated and a defendant be discharged from probation if the defendant

(1) has completed at least

(A) two years on probation if the person was convicted of a class A or class B felony that is not a crime under (4) of this subsection; or

(B) 18 months on probation if the person was convicted of a crime that is not a crime

(i) under (A) of this paragraph; or

(ii) under (4) of this subsection;

(2) has completed all treatment programs required as a condition of probation;

(3) is currently in compliance with all conditions of probation for all of the cases for which the person is on probation; and

(4) has not been convicted of an unclassified felony offense, a sexual felony as defined in AS 12.55.185, or a crime involving domestic violence as defined in AS 18.66.990.

(h) Before a court may terminate probation and discharge the defendant before the period of probation for the offense has been completed under (g) of this section, the court shall allow

victims to comment in writing to the court or allow a victim to give sworn testimony or make an unsworn oral presentation at a hearing held to determine whether to reduce the period of probation or terminate probation and discharge the defendant.

(i) If a probation officer recommends to the court that probation be terminated and a defendant be discharged from probation under (g) of this section, and if the victim has earlier requested to be notified, the Department of Corrections shall send the victim notice of the recommendation under (g) of this section and inform the victim of the victim's rights under this section, the deadline for receipt of written comments, the hearing date, and the court's address.

(j) If the victim submits written comments directly to the court and the parties do not otherwise have the victim statements, the court shall distribute the statements to the parties.

(k) In deciding whether to terminate probation and discharge the defendant from probation under (g) of this section, the court shall consider the victim's comments, testimony, or unsworn oral presentation, when relevant, and any response by the prosecuting attorney and defendant.

(l) If a victim desires notice under this section, the victim shall maintain a current, valid mailing address on file with the commissioner of corrections. The commissioner shall send the notice to the victim's last known address. The victim's address may not be disclosed to the defendant or the defendant's attorney.

(m) The court shall discharge the defendant from probation upon completion of the period of probation. The period of probation is considered to be completed when the combination of time served and credits earned under AS 33.05.020 is equal to the probation period imposed, or after the probationer has been discharged from probation under this section.

(n) In this section, “sex offense” has the meaning given in AS 12.63.100.

Sec. 12.55.100. Conditions of probation.

(a) While on probation and among the conditions of probation, the defendant

(1) shall be required to obey all state, federal, and local laws or ordinances, and any court orders applicable to the probationer; and

(2) may be required

(A) to pay a fine in one or several sums;

(B) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had, including compensation to a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime; when determining the amount of actual damages or loss under this subparagraph, the court shall value property as the market value of the property at the time and place of the crime or, if the market value cannot reasonably be ascertained, the cost of the replacement of the property within a reasonable time after the crime;

(C) to provide for the support of any persons for whose support the defendant is legally responsible;

(D) to perform community work in accordance with AS 12.55.055;

(E) to participate in or comply with the treatment plan of an inpatient or outpatient rehabilitation program specified by either the court or the defendant's probation officer that is related to the defendant's offense or to the defendant's rehabilitation;

(F) to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment;

(G) to comply with a program established under AS 47.38.020; and

(H) to comply with the sanctions imposed by the defendant's probation officer under AS 33.05.020(g).

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.

(c) A program of inpatient treatment may be required by the authorized agency under (a)(2)(F) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days after the agency's referral, and shall specifically set out the grounds on which the request for review is based. The court may order a hearing on the request for review.

(d) If the court orders probation for a defendant convicted of an offense requiring the state to collect a blood sample, oral sample, or both, from the defendant for the deoxyribonucleic acid identification registration system under AS 44.41.035, the court shall order the defendant, as a condition of probation, to submit to the collection of

(1) the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples; or

(2) an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer.

(e) In addition to other conditions imposed on the defendant, while on probation and as a condition of probation

(1) for a sex offense, as described in AS 12.63.100, the defendant

(A) shall be required to submit to regular periodic polygraph examinations;

(B) may be required to provide each electronic mail address, instant messaging address, and other Internet communication identifier that the defendant uses to the defendant's probation officer; the probation officer shall forward those addresses and identifiers to the Alaska state troopers and to the local law enforcement agency;

(2) if the defendant was convicted of a violation of AS 11.41.434 — 11.41.455, AS 11.61.125 — 11.61.128, or a similar offense in another jurisdiction, the defendant may be required to refrain from

(A) using or creating an Internet site;

(B) communicating with children under 16 years of age;

(C) possessing or using a computer; or

(D) residing within 500 feet of school grounds; in this subparagraph, “school grounds” has

the meaning given in AS 11.71.900.

(f) While on probation and as a special condition of probation for an offense where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or admitted, the court shall require that the defendant submit to electronic monitoring. Electronic monitoring under this subsection must provide for monitoring of the defendant's location and movements by Global Positioning System technology. The court shall require a defendant serving a period of probation with electronic monitoring as provided under this subsection to pay all or a portion of the costs of the electronic monitoring, but only if the defendant has sufficient financial resources to pay the costs or a portion of the costs. A defendant subject to electronic monitoring under this subsection is not entitled to a credit for time served in a correctional facility while the defendant is on probation. In this subsection, "correctional facility" has the meaning given in AS 33.30.901.

Sec. 12.55.101. Additional conditions of probation for domestic violence crimes.
(a) Before granting probation to a person convicted of a crime involving domestic violence, the court shall consider the safety and protection of the victim and any member of the victim's family. If a person convicted of a crime involving domestic violence is placed on probation, the court may order the conditions authorized in AS 12.55.100 and AS 18.66.100(c)(1) — (7) and (11), and may

(1) require the defendant to participate in and complete to the satisfaction of the court one or more programs for the rehabilitation of perpetrators of domestic violence that meet the standards set by, and that are approved by, the Department of Corrections under AS 44.28.020(b), if the program is available in the community where the defendant resides; the court may not order a defendant to participate in or complete a program for the rehabilitation of perpetrators of domestic violence that does not meet the standards set, and that is not approved, by the Department of Corrections under AS 44.28.020(b);

(2) require the defendant to refrain from the consumption of alcohol; and

(3) impose any other condition necessary to protect the victim and any members of the victim's family, or to rehabilitate the defendant.

(b) If the defendant is not in custody, the defendant shall pay the costs of an evaluation or a program of rehabilitation ordered under (a)(1) — (3) of this section. If the defendant is in custody, the responsibility for costs shall be as provided in AS 33.30.028.

Sec. 12.55.102. Alcohol-related offenses.
(a) The court may order as a condition of probation or generally as part of a sentence that a defendant convicted of an offense involving the use, consumption, or possession of an alcoholic beverage may not operate a motor vehicle during the period of probation unless the vehicle is equipped with a properly functioning, monitored, and maintained ignition interlock device. A condition of probation or sentence imposed under this subsection takes effect after any period of license revocation imposed under AS 28.15.165(d) or 28.15.181(c).

(b) The court, in imposing probation or a condition of a sentence under (a) of this section, may allow the defendant limited privileges to drive a motor vehicle without an ignition interlock device if the court determines that the defendant is required as a condition of employment to drive a motor vehicle owned or leased by the defendant's employer and that the defendant's

driving will not create substantial danger. If the court imposes probation described by this subsection, the court shall require the defendant to notify the defendant's employer of the probation, and shall require that the defendant, while driving the employer's vehicle, carry a letter from the employer authorizing the defendant to drive that vehicle.

(c) A court imposing a condition of probation under this section shall require the surrender of the driver's license and shall issue to the defendant a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction. The defendant shall pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device.

(d) The court may include the cost of the ignition interlock device as a part of the fine required to be imposed against the defendant under AS 28.35.030(b) or (n) or 28.35.032(g) or (p).

(e) In this section,
(1) "ignition interlock device" means equipment designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage, and that has been certified by the commissioner of corrections under AS 33.05.020.

(2) [Repealed, § 12 ch 85 SLA 2010.]

Sec. 12.55.105. Probation fee. [Repealed, § 4 ch 26 SLA 1989.]

Sec. 12.55.110. Notice and grounds for revocation of suspension.

(a) When sentence has been suspended, it may not be revoked except for good cause shown. In all proceedings for the revocation of a suspended sentence, the defendant is entitled to reasonable notice and the right to be represented by counsel.

(b) Good cause justifying the revocation of a suspended sentence is established if the defendant has violated an order of the court to participate in or comply with the treatment plan of a rehabilitation program under AS 12.55.015(a)(10).

(c) [Repealed, § 138 ch 4 FSSLA 2019.]
(d) [Repealed, § 138 ch 4 FSSLA 2019.]
(e) [Repealed, § 138 ch 4 FSSLA 2019.]
(f) [Repealed, § 138 ch 4 FSSLA 2019.]
(g) [Repealed, § 138 ch 4 FSSLA 2019.]
(h) [Repealed, § 138 ch 4 FSSLA 2019.]

Sec. 12.55.115. Fixing eligibility for discretionary parole at sentencing.

The court may, as part of a sentence of imprisonment, further restrict the eligibility of a prisoner for discretionary parole for a term greater than that required under AS 33.16.090 and 33.16.100.

Sec. 12.55.120. Appeal of sentence.

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding two years of unsuspended incarceration for a felony offense or exceeding 120 days for a misdemeanor offense may be appealed to the court of appeals by the defendant on the ground that the sentence is excessive, unless the sentence was imposed in

accordance with a plea agreement under the applicable Alaska Rules of Criminal Procedure and that agreement provided for imposition of a specific sentence or a sentence equal to or less than a specified maximum sentence. If the superior court imposed a sentence in accordance with a plea agreement that provided for a minimum sentence, the defendant may appeal only that portion of the sentence that exceeds the minimum sentence provided for in the plea agreement and that exceeds two years of unsuspended incarceration for a felony offense or 120 days of unsuspended incarceration for a misdemeanor offense. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal the defendant has been twice placed in jeopardy for the same offense.

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) A sentence appeal under this section does not confer or enlarge the right to bail pending appeal. When the defendant, in the prosecution of a regular appeal, urges excessiveness of the sentence as an additional ground for appeal, the defendant's right to bail pending appeal is governed by the relevant statutes and the rules of the court.

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

(e) A sentence within an applicable presumptive range set out in AS 12.55.125 or a consecutive or partially consecutive sentence imposed in accordance with the minimum sentences set out in AS 12.55.127 may not be appealed to the court of appeals under this section or AS 22.07.020 on the ground that the sentence is excessive. However, the sentence may be reviewed by an appellate court on the ground that it is excessive through a petition filed under rules adopted by the supreme court.

(f) The victim of the crime for which a defendant has been convicted and sentenced may file a petition for review in an appellate court of a sentence that is below the sentencing range for the crime.

Sec. 12.55.125. Sentences of imprisonment for felonies.

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 30 years but not

more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, firefighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree or murder of an unborn child under AS 11.41.150(a)(2) — (4) shall be sentenced to a definite term of imprisonment of at least 15 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adoptive parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, “legal guardian” and “position of authority” have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, four to seven years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS

11.71.021(a)(2)(A) or (B), seven to 11 years if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(C) and the conviction is for manufacturing or delivery under AS 11.71.021(a)(1) related to a schedule IA controlled substance set out in AS 11.71.140(c)(29) or under AS 11.71.021(a)(6) related to a schedule IIA controlled substance set out in AS 11.71.150(e)(2), four to 11 years;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 to 20 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,

(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(B) two to four years if the conviction is for attempt, solicitation, or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.71.021(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, three to seven years;

(4) if the offense is a third felony conviction, six to 10 years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085,

and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;

(2) if the offense is a second felony conviction, two to four years;

(3) if the offense is a third felony conviction, three to five years;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.

(f) If a defendant is sentenced under (a) or (b) of this section,
(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,
(1) imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range;

(2) and except as provided in (d)(1) or (e)(1) of this section, imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of
(1) sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a minor in the first degree, unlawful exploitation of a minor under AS 11.41.455(c)(2), or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:
(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was
(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for

a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (l) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) sexual assault in the first degree under AS 11.41.410(a)(1)(B), unlawful exploitation of a minor under AS 11.41.455(c)(1), enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (l) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, enticement of a minor under AS 11.41.452(d), indecent exposure in the first degree under AS 11.41.458(b)(2), distribution of child sexual abuse material under AS 11.61.125(e)(2), patron of a victim of sex trafficking under AS 11.66.137, or attempt, conspiracy, or solicitation to commit sexual assault in the first degree under AS 11.41.410(a)(1)(B) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described

in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, sexual abuse of a minor in the third degree under AS 11.41.438(c), incest, indecent exposure in the first degree under AS 11.41.458(b)(1), indecent viewing or production of a picture under AS 11.61.123(g)(1) or (2), possession of child sexual abuse material, distribution of child sexual abuse material under AS 11.61.125(e)(1), patron of a victim of sex trafficking under AS 11.66.137, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child sexual abuse material, or patron of a victim of sex trafficking under AS 11.66.137 , may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve the circumstances described in (B) or (C) of this paragraph, two to 12 years;

(B) if the offense is a first felony conviction under AS 11.61.125(e)(1) and does not involve circumstances described in (C) of this paragraph, four to 12 years;

(C) if the offense is a first felony conviction under AS 11.61.125(e)(1), and the defendant hosted, created, or helped host or create a mechanism for multi-party sharing or distribution of child sexual abuse material, or received a financial benefit or had a financial interest in a child sexual abuse material sharing or distribution mechanism, six to 14 years;

(D) if the offense is a second felony conviction and does not involve circumstances described in (E) of this paragraph, eight to 15 years;

(E) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(F) if the offense is a third felony conviction and does not involve circumstances described in (G) of this paragraph, 15 to 25 years;

(G) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the definite term. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) [Repealed, § 32 ch 2 SLA 2005.]

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i) of this section, the total term, made up of the active term of imprisonment plus any suspended term of imprisonment, must fall within the presumptive range, and the active term of imprisonment may not fall below the lower end of the presumptive range.

(o) [Repealed, § 179 ch. 36 SLA 2016.]

(p) If the state seeks either (1) the imposition of a sentence under (a) of this section that would preclude the defendant from being awarded a good time deduction under AS 33.20.010(a) based on a fact other than a prior conviction; or (2) to establish a fact that would increase the presumptive sentencing range under (c)(2), (d)(2), (e)(4), (i)(1)(A) or (B), or (i)(2)(A) or (B) of this section, the factual question required to be decided shall be presented to a trial jury and proven beyond a reasonable doubt under procedures set by the court, unless the defendant waives trial by jury and either stipulates to the existence of the fact or consents to have the fact proven to the court sitting without a jury. Written notice of the intent to establish a fact under this subsection must be served on the defendant and filed with the court as provided for notice under AS 12.55.155(f)(2).

(q) Other than for convictions subject to a mandatory 99-year sentence, the court shall impose, in addition to an active term of imprisonment imposed under (i) of this section, a minimum period of (1) suspended imprisonment of five years and a minimum period of probation supervision of 15 years for conviction of an unclassified felony, (2) suspended imprisonment of three years and a minimum period of probation supervision of 10 years for conviction of a class A or class B felony, or (3) suspended imprisonment of two years and a minimum period of probation supervision of five years for conviction of a class C felony. The period of probation is in addition to any sentence received under (i) of this section and may not be suspended or reduced. Upon a defendant's release from confinement in a correctional facility, the defendant is subject to the probation requirement under this subsection and shall submit and comply with the terms and requirements of the probation.

Sec. 12.55.127. Consecutive and concurrent terms of imprisonment.

(a) If a defendant is required to serve a term of imprisonment under a separate judgment, a term of imprisonment imposed in a later judgment, amended judgment, or probation revocation shall be consecutive.

(b) Except as provided in (c) of this section, if a defendant is being sentenced for two or more crimes in a single judgment, terms of imprisonment may be concurrent or partially concurrent.

(c) If the defendant is being sentenced for

(1) escape, the term of imprisonment shall be consecutive to the term for the underlying crime;

(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 — 11.41.250, 11.41.420 — 11.41.432, 11.41.436 — 11.41.458, or 11.41.500 — 11.41.520;

(3) two or more crimes of violation of condition of release under AS 11.56.757, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for the underlying crime and each additional crime under AS 11.56.757.

(d) If the defendant is being sentenced for two or more crimes of distribution of child sexual abuse material under AS 11.61.125, possession of child sexual abuse material under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

(e) In this section,

(1) “active term of imprisonment” means the total term of imprisonment imposed for a crime, minus suspended imprisonment;

(2) “additional crime” means a crime that is not the primary crime;

(3) “presumptive term” means the middle of the applicable presumptive range set out in AS 12.55.125;

(4) “primary crime” means the crime

(A) for which the sentencing court imposes the longest active term of imprisonment; or

(B) that is designated by the sentencing court as the primary crime when no single crime has the longest active term of imprisonment.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence committed in violation of the provisions of an order issued or filed under AS 12.30.027 or AS 18.66.100 — 18.66.180 and not subject to sentencing under (g) of this section shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree or harassment in the first degree who knowingly directed the conduct constituting the offense at

(1) a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder or medical professional who was engaged in the performance of official duties at the time of the assault or harassment shall be sentenced to a minimum term of imprisonment of

(A) 60 days if the defendant violated AS 11.41.230(a)(1) or (2) or AS 11.61.118;

(B) 30 days if the defendant violated AS 11.41.230(a)(3);

(2) a person who was on school grounds during school hours or during a school function or a school-sponsored event, on a school bus, at a school-sponsored event, or in the administrative offices of a school district, if students are educated at that office, shall be sentenced to a minimum term of imprisonment of 60 days if the defendant violated AS 11.41.230(a)(1) or (2); in this paragraph,

(A) “school bus” has the meaning given in AS 11.71.900;

(B) “school district” has the meaning given in AS 47.07.063;

(C) “school grounds” has the meaning given in AS 11.71.900.

(e) If a defendant is sentenced under (c), (d), or (h) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and

(3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS 11.46.365(a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

(1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) A defendant convicted of failure to register as a sex offender or child kidnapper in the second degree under AS 11.56.840 shall be sentenced to a minimum term of imprisonment of 35 days.

(i) If a defendant is sentenced under (g) of this section,
(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

(3) the minimum term of imprisonment may not otherwise be reduced.

(j) [Repealed, § 179 ch. 36 SLA 2016.]
(k) In this section,
(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(3) "medical professional" means a person who is an advanced practice registered nurse, anesthesiologist, chiropractor, dental hygienist, dentist, health aide, nurse, nurse aide, mental health counselor, osteopath, physician, physician assistant, psychiatrist, psychological associate, psychologist, radiologist, surgeon, or x-ray technician, or who holds a substantially similar position.

(l) [Repealed, § 138 ch 4 FSSLA 2019.]
(m) [Repealed, § 138 ch 4 FSSLA 2019.]
(n) [Repealed, § 138 ch 4 FSSLA 2019.]
(o) [Repealed, § 138 ch 4 FSSLA 2019.]
(p) [Repealed, § 138 ch 4 FSSLA 2019.]

Sec. 12.55.137. Penalties for gang activities punishable as misdemeanors.
(a) If a person commits an offense that would be a class B misdemeanor and the person committed the offense for the benefit of, at the direction of, or in association with a criminal street gang, the offense is a class A misdemeanor.

(b) If a person commits an offense that would be a class A misdemeanor and the person committed the offense for the benefit of, at the direction of, or in association with a criminal street gang, the offense is a class C felony.

Sec. 12.55.139. Penalties for criminal nonsupport and aiding nonpayment of child support.
(a) In addition to other penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the court may suspend, restrict, or revoke, for the period during which the arrearage continues to exist, a recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

(b) In addition to other penalties imposed for the offense of aiding the nonpayment of child support in the first degree under AS 11.51.121 and for the offense of aiding the nonpayment of

child support in the second degree under AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

Sec. 12.55.140. Sentences for violations. [Repealed, § 23 ch 59 SLA 1982.]

Sec. 12.55.145. Prior convictions.

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

(A) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) commission of and conviction for offenses relied on as prior most serious felony offenses must occur in the following order: conviction for the first offense must occur before commission of the second offense, and conviction for the second offense must occur before commission of the offense for which the defendant is being sentenced;

(3) AS 12.55.135(g),

(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a crime against a person or a crime involving domestic violence is considered a prior conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(4) AS 12.55.125(i),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a sexual felony is a prior conviction for a sexual felony;

(B) a felony conviction in another jurisdiction making it a crime to commit any lewd and lascivious act on a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the sexual desires of the defendant or the victim is a prior conviction for a sexual felony;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(D) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction.

(b) When sentence is imposed under this chapter, prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served on the defendant or the defendant's counsel at least 20 days before the date set for imposition of sentence.

(c) The defendant shall file with the court and serve on the prosecuting attorney notice of denial, consisting of a concise statement of the grounds relied upon and that may be supported by affidavit or other documentary evidence, no later than 10 days before the date set for the imposition of sentence if the defendant

(1) denies

(A) the authenticity of a prior judgment of conviction;

(B) that the defendant is the person named in the judgment;

(C) that the elements of a prior offense committed in this or another jurisdiction are similar to those of a

(i) felony defined as such under Alaska law;

(ii) most serious felony, defined as such under Alaska law;

(iii) crime against a person or a crime involving domestic violence;

(D) that a prior conviction occurred within the period specified in (a)(1)(A) or (3)(A) of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) or (3)(C) of this section.

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1)(A) or (3)(A) of this section, that a conviction should not be considered a prior felony conviction under (a)(1)(B) of this section, a prior most serious felony conviction under (a)(2)(A) of this section, or a prior crime against a person or a crime involving domestic violence conviction under (a)(3)(B) of this section, or that a previous conviction did not occur in the order required under (a)(2)(B) of this section, then the burden is on the state to prove

the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing evidence.

(e) The authenticated judgments of courts of record of the United States, the District of Columbia, or of any state, territory, or political subdivision of the United States are prima facie evidence of conviction.

(f) Under this section, a prior conviction has occurred when a defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or when a verdict of guilty or guilty but mentally ill has been returned by a jury or by the court.

(g) In this section,

(1) “crime against a person” has the meaning given in AS 12.55.135;

(2) “crime involving domestic violence” has the meaning given in AS 18.66.990.

Sec. 12.55.147. Fingerprints at time of sentencing.

When a defendant is convicted of a felony by a court of this state, the defendant's fingerprints shall be placed on the judgment of conviction in open court, on the record, at the time of sentencing. The defendant and the person administering the fingerprinting shall sign their names under the fingerprints.

Sec. 12.55.148. Judgment for sex offenses or child kidnappings.

(a) When a defendant is convicted of a sex offense or child kidnapping by a court of this state, the written judgment must set out the requirements of AS 12.63.010 and, if it can be determined by the court, whether that conviction will require the offender or kidnapper to register for life or a lesser period under AS 12.63.

(b) In this section, “sex offense” and “child kidnapping” have the meanings given in AS 12.63.100.

Sec. 12.55.151. Court may not reduce or mitigate punishment based on victim's failure to appear or testify.

Notwithstanding another provision of law, when sentencing a defendant, a court may not mitigate or reduce the punishment of the defendant based on, or otherwise consider as a mitigating factor or reason to impose a lesser punishment, the failure of the crime victim to appear or testify.

Sec. 12.55.155. Factors in aggravation and mitigation.

(a) Except as provided in (e) of this section, if a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and

(1) the low end of the presumptive range is four years or less, the court may impose any sentence below the presumptive range for factors in mitigation or may increase the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation;

(2) the low end of the presumptive range is more than four years, the court may impose a

sentence below the presumptive range as long as the active term of imprisonment is not less than 50 percent of the low end of the presumptive range for factors in mitigation or may increase the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation.

(b) Sentences under this section that are outside of the presumptive ranges set out in AS 12.55.125 shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking a presumptive range under this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated assaultive behavior, repeated instances of assaultive behavior, repeated instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) — (5), or a combination of assaultive behavior and cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) — (5); in this paragraph, "aggravated assaultive behavior" means assault that is a felony under AS 11.41, or a similar provision in another jurisdiction;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense under an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement

officer, correctional employee, firefighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 — 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 — 11.41.460 involving the same or another victim;

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(D) specified in AS 11.41 and was committed against a person with whom the defendant has a dating relationship or with whom the defendant has engaged in a sexual relationship; or

(E) specified in AS 11.41.434 — 11.41.458 or AS 11.61.128 and the defendant was 10 or more years older than the victim;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 — 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, “incapacitated” has the meaning given in AS 11.41.470;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault on a uniformed or otherwise clearly identified peace officer or correctional employee; notice and denial of convictions are governed by AS 12.55.145(b) — (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) “school bus” has the meaning given in AS 11.71.900;

(B) “school district” has the meaning given in AS 47.07.063;

(C) “school grounds” has the meaning given in AS 11.71.900;

(33) the offense was a felony specified in AS 11.41.410 — 11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS; in this paragraph, “HIV” and “AIDS” have the meanings given in AS 18.15.310;

(34) the defendant committed the offense on, or to affect persons or property on, the premises

of a recognized shelter or facility providing services to victims of domestic violence or sexual assault;

(35) the defendant knowingly directed the conduct constituting the offense at a victim because that person was 65 years of age or older;

(36) the defendant committed the offense at a health care facility and knowingly directed the conduct constituting the offense at a medical professional during or because of the medical professional's exercise of professional duties; in this paragraph,

(A) “health care facility” has the meaning given in AS 18.07.111;

(B) “medical professional” has the meaning given in AS 12.55.135(k);

(37) the defendant knowingly caused the victim to become unconscious by means of a dangerous instrument; in this paragraph, “dangerous instrument” has the meaning given in AS 11.81.900(b)(16)(B).

(d) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but that significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 — 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 — 11.41.470, the victim provoked the crime to a significant degree;

(8) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(11) after commission of the offense for which the defendant is being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(12) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(13) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(16) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior;

(17) except in the case of an offense defined by AS 11.41 or AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the time of sentencing, has successfully completed a court-ordered treatment program as defined in AS 28.35.028 that was begun after the offense was committed;

(18) except in the case of an offense defined under AS 11.41 or AS 11.46.400 or a defendant who has previously been convicted of a felony, the defendant committed the offense while suffering from a mental disease or defect as defined in AS 12.47.130 that was insufficient to constitute a complete defense but that significantly affected the defendant's conduct;

(19) the defendant is convicted of an offense under AS 11.71, and the defendant sought medical assistance for another person who was experiencing a drug overdose contemporaneously with the commission of the offense;

(20) except in the case of an offense defined under AS 11.41 or AS 11.46.400, the defendant committed the offense while suffering from a condition diagnosed

(A) as a fetal alcohol spectrum disorder, the fetal alcohol spectrum disorder substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and the fetal alcohol spectrum disorder, though insufficient to constitute a complete defense, significantly affected the defendant's conduct; in this subparagraph, “fetal alcohol spectrum disorder” means a condition of impaired brain function in the range of permanent birth defects caused by maternal consumption of alcohol during pregnancy; or

(B) as combat-related post-traumatic stress disorder or combat-related traumatic brain injury, the combat-related post-traumatic stress disorder or combat-related traumatic brain injury substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and the combat-related post-traumatic stress disorder or combat-related traumatic brain injury, though insufficient to constitute a complete defense, significantly affected the defendant's conduct; in this subparagraph, “combat-related post-traumatic stress disorder or combat-related traumatic brain injury” means post-traumatic stress disorder or traumatic brain injury resulting from combat with an enemy of the United States in the line of duty while on active duty as a member of the armed forces of the United States; nothing in this subparagraph is intended to limit the application of (18) of this subsection;

(21) the defendant, as a condition of release ordered by the court, successfully completed an alcohol and substance abuse monitoring program established under AS 47.38.020.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a sentence within the presumptive range under AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high end of the presumptive range. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to impose a sentence below the low end of the presumptive range.

(f) If the state seeks to establish a factor in aggravation at sentencing

(1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of this section, or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence; the factors in aggravation listed in this paragraph and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury; all findings must be set out with specificity;

(2) other than one listed in (1) of this subsection, the factor shall be presented to a trial jury under procedures set by the court, unless the defendant waives trial by jury, stipulates to the existence of the factor, or consents to have the factor proven under procedures set out in (1) of this subsection; a factor in aggravation presented to a jury is established if proved beyond a reasonable doubt; written notice of the intent to establish a factor in aggravation must be served on the defendant and filed with the court

(A) 20 days before trial, or at another time specified by the court;

(B) within 48 hours, or at a time specified by the court, if the court instructs the jury about the option to return a verdict for a lesser included offense; or

(C) five days before entering a plea that results in a finding of guilt, or at another time specified by the court.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) If one of the aggravating factors in (c) of this section is established as provided in (f)(1) and (2) of this section, the court may increase the term of imprisonment up to the maximum term of imprisonment. Any additional aggravating factor may then be established by clear and convincing evidence by the court sitting without a jury, including an aggravating factor that the jury has found not to have been established beyond a reasonable doubt.

(i) In this section, “serious provocation” has the meaning given in AS 11.41.115(f).

Sec. 12.55.165. Extraordinary circumstances.

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), or (28) is present.

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

(d) A court may not refer a case to a three-judge panel under (a) of this section if the request for referral is based, in whole or in part, on the claim that a sentence within the presumptive range may result in the classification of the defendant as deportable under federal immigration law.

Sec. 12.55.172. [Renumbered as AS 12.55.180.]

Sec. 12.55.175. Three-judge sentencing panel.

(a) There is created within the superior court a panel of five superior court judges to be appointed by the chief justice in accordance with rules and for terms as may be prescribed by the supreme court. Three judges of the panel shall be designated by the chief justice as members. The remaining two judges shall be designated by the chief justice as first and second alternates to sit as members in the event of disqualification or disability in accordance with rules as may be prescribed by the supreme court.

(b) Upon receipt of a record of proceedings under AS 12.55.165, the three-judge panel shall consider all pertinent files, records, and transcripts, including the findings and conclusions of the judge who originally heard the matter. The panel may hear oral testimony to supplement the record before it. If the panel supplements the record, the panel shall permit the victim to testify before the panel. If the panel finds that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, it shall sentence the defendant in accordance with this section. If the panel does not find that manifest injustice would result, it shall remand the case to the sentencing court, with a written statement of its findings and conclusions, for sentencing under AS 12.55.125.

(c) The three-judge panel may in the interest of justice sentence the defendant to any definite term of imprisonment up to the maximum term provided for the offense or to any sentence authorized under AS 12.55.015.

(d) Sentencing of a defendant or remanding of a case under this section shall be by a majority of the three-judge panel.

(e) If the three-judge panel determines under (b) of this section that manifest injustice would result from imposition of a sentence within the presumptive range and the panel also finds that the defendant has an exceptional potential for rehabilitation and that a sentence of less than the presumptive range should be imposed because of the defendant's exceptional potential for rehabilitation, the panel

(1) shall sentence the defendant within the presumptive range required under AS 12.55.125 or as permitted under AS 12.55.155;

(2) shall order the defendant under AS 12.55.015 to engage in appropriate programs of rehabilitation; and

(3) may provide that the defendant is eligible for discretionary parole under AS 33.16.090 during the second half of the sentence imposed under this subsection if the defendant successfully completes all rehabilitation programs ordered under (2) of this subsection.

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

(g) A defendant being sentenced under AS 12.55.125(c), (d), (e), or (i) may not establish, nor may a three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposing a sentence within the presumptive range based, in whole or in part, on the claim that the sentence may result in the classification of the defendant as deportable under federal immigration law.

Sec. 12.55.180. Designation of representative.

If more than one person who qualifies as a victim under AS 12.55.185 desires notice under AS 12.55.088, the prosecuting attorney shall designate one person to represent all victims for purposes of receiving the notice required and exercising the rights granted under this chapter.

Sec. 12.55.185. Definitions.

In this chapter, unless the context requires otherwise,

(1) “active term of imprisonment” has the meaning given in AS 12.55.127;

(2) “building” has the meaning given in AS 11.81.900;

(3) “crime against a person” has the meaning given in AS 33.30.901;

(4) “criminal street gang” has the meaning given in AS 11.81.900(b);

(5) “dangerous instrument” has the meaning given in AS 11.81.900;

(6) “domestic violence” has the meaning given in AS 18.66.990;

(7) “firearm” has the meaning given in AS 11.81.900;

(8) “first felony conviction” means that the defendant has not been previously convicted of a felony;

(9) “judicial officer” has the meaning given in AS 11.56.900;

(10) “most serious felony” means

(A) arson in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2),

enticement of a minor under AS 11.41.452(e), or any unclassified or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;

(11) "paramedic" means a mobile intensive care paramedic licensed under AS 18.08;

(12) "peace officer" has the meaning given in AS 11.81.900;

(13) "pecuniary gain" means the amount of money or value of property at the time of commission of the offense derived by the defendant from the commission of the offense, less the amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority before sentence is imposed;

(14) "second felony conviction" means that the defendant previously has been convicted of a felony;

(15) "serious physical injury" has the meaning given in AS 11.81.900;

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, sexual abuse of a minor in the third degree under AS 11.41.438(c), unlawful exploitation of a minor, patron of a victim of sex trafficking, indecent viewing or production of a picture under AS 11.61.123(g)(1) or (2), distribution of child sexual abuse material, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child sexual abuse material, enticement of a minor, and felony attempt, conspiracy, or solicitation to commit those crimes;

(17) "third felony conviction" means that the defendant has been at least twice previously convicted of a felony;

(18) "unconditional discharge" means that a defendant is released from all disability arising under a sentence, including probation and parole;

(19) "victim" means

(A) a person against whom an offense has been perpetrated;

(B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:

(i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or

(ii) a parent, adult child, guardian, or custodian of the person;

(C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:

(i) a person living in a spousal relationship with the deceased before the deceased died;

(ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or

(iii) any other interested person, as may be designated by a person having authority in law to do so.

Chapter 60. Prevention of Crimes.

Article 1. Manner of Preventing Crimes.

Sec. 12.60.010. Resistance to commission of crime. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.81.330 — AS 11.81.350.]

Sec. 12.60.020. Manner of preventing crime.

Crimes may be prevented by the intervention of the peace officers

(1) by requiring security to keep the peace;

(2) by forming a police in cities, towns, villages, and settlements, and by requiring their attendance at exposed places;

(3) by suppressing riots.

Sec. 12.60.030. Justification of persons aiding officers in preventing crime. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.81.380.]

Article 2. Action on Threatened Crime; Requirements of Undertakings.

Sec. 12.60.040. Action on threatened crime.

A person may bring a complaint in the district court against a person who has threatened to commit a crime against the person or property of another.

Sec. 12.60.050. Examination of complainant and witnesses.

When the complaint is brought, the judge or magistrate shall examine the complainant and require the complainant to sign the complaint under oath, and take signed statements under oath of any witnesses the complainant produces.

Sec. 12.60.060. Arrest.

If it appears that there is good reason to fear the commission of the crime threatened by the person complained of, the judge or magistrate shall have the person complained of arrested and immediately brought before the judge or magistrate.

Sec. 12.60.070. Examination of charge.

When the person complained of appears or is brought before the judge or magistrate, if the charge in the complaint is controverted, the judge or magistrate may subpoena witnesses, hear any statement to the charges made by the person complained of, and hear all other testimony.

Sec. 12.60.080. Adjournment of examination.

The judge or magistrate may adjourn the examination and commit the person complained of, or take bail or a deposit of money in lieu thereof.

Sec. 12.60.090. Discharge for lack of grounds.

If it appears that there is no good reason to fear the commission of the crime alleged to have been

threatened, the person complained of shall be discharged.

Sec. 12.60.100. Requirement of undertaking.
If there is good reason to fear the commission of the crime, the person complained of may be required to enter into an undertaking in a sum not exceeding $2,000 as the judge or magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of the state and particularly toward the complainant. The undertaking is valid and binding for not more than one year and may, upon the renewal of the action, be extended for an additional period of not more than one year, or a new undertaking required.

Sec. 12.60.110. Discharge upon giving undertaking.
If the undertaking is given, the party complained of shall be discharged. If the party complained of does not give the undertaking, the judge or magistrate shall commit the party to the custody of a peace officer.

Sec. 12.60.120. Security where crime committed or threatened before court, judge or magistrate.
A person who, in the presence of a court, judge, or magistrate, assaults or threatens to assault another, or to commit an offense against another's property, or who contends with another with angry words to the disturbance of the peace may be ordered by the court, judge, or magistrate without warrant or other proof to give security as provided in this chapter and, if the person omits to do so, may be committed.

Sec. 12.60.130. Discharge upon giving undertaking after commitment.
If the person complained of is committed for not giving the undertaking required, the person may be discharged by any judge or magistrate upon giving the undertaking.

Sec. 12.60.140. Forfeiture of undertaking.
The undertaking is forfeited upon the person complained of being convicted of a breach of the peace.

Sec. 12.60.150. Rights and authorities of sureties.
The sureties in an undertaking to keep the peace are entitled to the rights and authority of bail under AS 12.30 and the Alaska Rules of Criminal Procedure, and may be exonerated from their undertaking in the manner prescribed by law.

Sec. 12.60.160. Requiring security of convicted person.
The court before whom any person is convicted of a crime which, by the judgment of the court, is punished otherwise than by imprisonment in the penitentiary may require that person to enter into an undertaking as provided in AS 12.60.100 for not more than two years. If the person does not provide the undertaking, the court may commit the person until the undertaking is given or the period expires.

Sec. 12.60.170. Security to keep the peace.
An undertaking to keep the peace shall also be considered an undertaking to be of good behavior, and cannot be required except as prescribed in this chapter.

Article 3. Unlawful Assembly.

Sec. 12.60.180. Unlawful or riotous assembly.

Where six or more persons, whether armed or not, are riotously assembled, a district judge, magistrate, peace officer, or the chief executive officer of a city, town, village, or settlement shall go among the persons assembled, or as near to them as can be done with safety, and command them in the name of the state to disperse.

Sec. 12.60.190. Arrest on failure to disperse and commanding aid.

If the persons assembled do not immediately disperse, the district judges, magistrates, and officers shall arrest them. Any two of the officers mentioned in AS 12.60.180 may command the aid of a sufficient number of persons, armed or otherwise, as may be necessary, and may proceed in the manner as in their judgment may be most expedient to disperse the assembly and arrest the offenders.

Sec. 12.60.200. Person refusing to aid officers as rioter. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.60.210. Officer failing to act is guilty of misdemeanor.

If a district judge, magistrate, or officer having notice of an unlawful or riotous assembly, mentioned in AS 12.60.180, neglects to proceed to the place of assembly, or as near as can be done with safety, and to exercise the authority with which invested for suppressing the same and arresting the offenders, that person is guilty of a misdemeanor.

Sec. 12.60.220. Guilt where death ensues.

If, in the effort to suppress or disperse any unlawful or riotous assembly, or to arrest or detain any of the persons engaged in the assembly, any of the rioters or other persons then present as spectators or otherwise are killed or wounded, the district judge, magistrate, and officers and persons acting in their aid are guiltless of the killing or wounding. However, if a district judge, magistrate, or officer or person acting in their aid is killed or wounded, all the persons unlawfully engaged in the assembly are guilty of the killing or wounding.

Article 4. Rewards.

Sec. 12.60.230. Reward for information leading to conviction of certain persons.

A reward of $200 shall be paid to any person not a peace officer who lodges information that leads to the arrest and conviction of any person or persons maliciously breaking into and entering any cache, cabin, house, or warehouse, whether occupied or unoccupied, located outside the boundaries of an incorporated town in the state.

Sec. 12.60.240. Payment of reward.

The Department of Revenue shall pay all claims for rewards upon certificate by a judge or clerk of the superior court, showing that the claimant has lodged information that resulted in an arrest and conviction under the provisions of AS 12.60.230.

Chapter 61. Rights of Victims; Protection of Victims and Witnesses.

Article 1. Rights and Duties.

Sec. 12.61.010. Rights of crime victims.

(a) Victims of crimes have the following rights:

(1) the right to be present during any proceeding in

(A) the prosecution and sentencing of a defendant if the defendant has the right to be present, including being present during testimony even if the victim is likely to be called as a witness;

(B) the adjudication of a minor as provided under AS 47.12.110;

(2) the right to be notified by the appropriate law enforcement agency or the prosecuting attorney of any request for a continuance that may substantially delay the prosecution and of the date of trial, sentencing, including a proceeding before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which the defendant's release from custody is considered;

(3) the right to be notified that a sentencing hearing or a court proceeding to which the victim has been subpoenaed will not occur as scheduled;

(4) the right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts and to be provided with information as to the protection available;

(5) the right to be notified of the procedure to be followed to apply for and receive any compensation under AS 18.67;

(6) at the request of the prosecution or a law enforcement agency, the right to cooperate with the criminal justice process without loss of pay and other employee benefits except as authorized by AS 12.61.017 and without interference in any form by the employer of the victim of crime;

(7) the right to obtain access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(8) the right to make a written or oral statement for use in preparation of the presentence report of a felony defendant;

(9) the right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

(10) the right to be informed by the prosecuting attorney, at any time after the defendant's conviction, about the complete record of the defendant's convictions;

(11) the right to notice under AS 12.47.095 concerning the status of the defendant found not guilty by reason of insanity;

(12) the right to notice under AS 33.16.087 of a hearing concerning special medical parole of the defendant;

(13) the right to notice under AS 33.16.120 of a hearing to consider or review discretionary parole of the defendant;

(14) the right to notice under AS 33.30.013 of the release or escape of the defendant; and

(15) the right to be notified orally and in writing of and receive information about the office of victims' rights from the law enforcement officer initially investigating the crime and from the

prosecuting attorney assigned to the offense; at a minimum, the information provided must include the address, telephone number, and Internet address of the office of victims' rights; this paragraph

(A) applies only to victims of felonies and to victims of class A misdemeanors if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41; if the victim is an unemancipated minor, the law enforcement officer and the prosecuting attorney shall also provide the notice required by this paragraph to the parent or guardian of the minor;

(B) is satisfied if, at the time of initial contact with the crime victim, the investigating officer and prosecuting attorney each give each crime victim a brochure or other written material prepared by the office of victims' rights and provided to law enforcement agencies for that purpose.

(b) Law enforcement agencies, prosecutors, corrections agencies, social services agencies, and the courts shall make every reasonable effort to ensure that victims of crimes have the rights set out in (a) of this section. However, a failure to ensure these rights does not give rise to a separate cause of action against law enforcement agencies, other agencies of the state, or a political subdivision of the state.

Sec. 12.61.015. Duties of prosecuting attorney.

(a) If a victim of a felony, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence requests, the prosecuting attorney shall make a reasonable effort to

(1) confer with the person against whom the offense has been perpetrated about that person's testimony before the defendant's trial;

(2) in a manner reasonably calculated to give prompt actual notice, notify the victim

(A) of the defendant's conviction and the crimes of which the defendant was convicted;

(B) of the victim's right in a case that is a felony to make a written or oral statement for use in preparation of the defendant's presentence report, and of the victim's right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

(C) of the address and telephone number of the office that will prepare the presentence report; and

(D) of the time and place of the sentencing proceeding;

(3) notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case;

(4) confer with the victim or the victim's legal guardian concerning a proposed plea agreement before entering into the plea agreement to ask the victim or the victim's legal guardian whether the victim is in agreement with the proposed plea agreement; the prosecuting attorney shall record whether the victim or the victim's legal guardian is in agreement with the proposed plea agreement;

(5) inform the victim of a pending motion that may substantially delay the prosecution and inform the court of the victim's position on the motion; in this paragraph, a “substantial delay” is

(A) for a misdemeanor, a delay of one month or longer;

(B) for a felony, a delay of two months or longer; and

(C) for an appeal, a delay of six months or longer.

(b) The notice given under (a)(2) of this section must inform the victim that the statement, sworn testimony, or unsworn oral presentation of the victim may contain any relevant information including

(1) an explanation of the nature and extent of physical, psychological, or emotional harm or trauma suffered by the victim;

(2) an explanation of the extent of economic loss or property damage suffered by the victim;

(3) an opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage; and

(4) the recommendation of the victim for an appropriate sentence.

(c) The state and the prosecuting attorney may not be held liable in damages for any failure to comply with the requirements of this section.

(d) The court may reschedule a hearing to consider a plea agreement as needed to allow additional time to comply with the victim notification requirements under (a)(2) and (4) of this section.

(e) Nothing in this section requires a victim or a victim's legal guardian to provide a response to a prosecuting attorney regarding a plea agreement or requires the prosecuting attorney to be bound by the victim's or legal guardian's response regarding the plea agreement.

(f) The prosecuting attorney shall notify a victim of a sex offense as defined in AS 12.63.100 or crime involving domestic violence as defined in AS 18.66.990 if, before trial, the offender of the victim is discharged from a treatment program for noncompliance.

Sec. 12.61.016. Duties of agency investigating a sexual offense.

A law enforcement agency investigating an offense under AS 11.41.410 - 11.41.470 may not disclose information related to the investigation to an employer of the victim unless

(1) the victim expressly permits the disclosure; or

(2) the agency determines the disclosure is necessary to investigate or prevent a crime.

Sec. 12.61.017. Interference by victim's employer.

(a) An employer may not penalize or threaten to penalize a victim of an offense because the victim

(1) is subpoenaed or requested by the prosecuting attorney to attend a court proceeding for the purpose of giving testimony; or

(2) reports the offense to a law enforcement agency or participates in the investigation of the offense by a law enforcement agency.

(b) A person who violates (a) of this section is guilty of a violation.

(c) A victim who suffers a pecuniary loss as a result of an employer's act prohibited by this section may bring a civil action to recover actual damages and punitive damages of three times the actual damages sustained.

(d) In this section, “penalize” means to take action affecting the employment status, wages, and benefits payable to the victim, including

(1) demotion or suspension;

(2) dismissal from employment; and

(3) loss of pay or benefits, except pay and benefits that are directly attributable to the victim's absence from employment to

(A) attend the court proceeding;

(B) report the offense to a law enforcement agency;

(C) participate in a law enforcement agency investigation of the offense.

Sec. 12.61.020. Money received as the result of the commission of a crime.

(a) Every person contracting with an offender with respect to the reenactment of the offender's crime by way of a movie, book, magazine article, radio or television presentation, or live entertainment of any kind, or to the expression of the offender's thoughts, feelings, opinions, or emotions regarding the crime, shall pay to the state any money that would otherwise be owing to the offender.

(b) A claim by a victim arising out of an order of restitution under AS 12.55.045, or a judgment in a civil action against an offender for damages resulting from a crime is a superior claim for money that would otherwise be paid to the state under (a) of this section.

(c) Notwithstanding other statutory limitations, a civil action by a victim against an offender for damages resulting from the commission of the crime must be commenced within 10 years of the date of the crime or the date of the discovery of the perpetrator of the crime if the perpetrator is unknown on the date of the commission of the crime.

(d) For the purposes of this section, if the offender has not been convicted, proof of the commission of a crime must be established by a preponderance of the evidence.

(e) In this section

(1) “offender” means a person who has committed a crime in this state, whether or not the person has been convicted of the crime, or that person's representative or assignee.

(2) [Repealed, § 25 ch 59 SLA 1989.]

Sec. 12.61.030. Designation of representative.

If more than one person who qualifies as a victim under AS 12.55.185 makes a request under AS 12.61.010 — 12.61.030, the prosecuting attorney shall designate one person for purposes of

receiving the notice required and exercising the rights granted under AS 12.61.010 — 12.61.030.

Sec. 12.61.050. Automated victim notification system.
(a) The Department of Corrections shall establish an automated victim notification system that automatically provides crime victims with notice by telephone when there is a change in the status of their offender. The system must also allow crime victims to initiate telephone calls to the system to receive the latest status report for their offender. An automated victim notification system established under this section satisfies the duty of a state agency to notify a crime victim of the change in status of an offender. The failure of a system to provide notice to a crime victim does not give rise to a separate cause of action by the crime victim against the state, an agency of the state, or a municipality, or the officers, employees, or contractors of the state, agency of the state, or municipality.

(b) Each department and each municipality shall cooperate with the Department of Corrections in establishing and maintaining an automated victim notification system required under this section.

(c) Through the automated victim notification system established in (a) of this section, the Department of Corrections shall notify a victim of a sex offense as defined in AS 12.63.100 or a crime involving domestic violence as defined in AS 18.66.990 of the option to request a protective order under AS 18.65.850 or AS 18.66.100 and provide contact information for state victim resources, including the Council on Domestic Violence and Sexual Assault, the Alaska Network on Domestic Violence and Sexual Assault, the office of victims' rights, and the Violent Crimes Compensation Board. This notification must occur when the offender of the victim is released from incarceration or when the order under AS 12.55.015(k) expires, whichever is later.

Article 2. Victim and Witness Information Confidentiality.
Sec. 12.61.100. Declaration of purpose.
The purpose of AS 12.61.100 — 12.61.150 is to protect victims of and witnesses to crime from risk of harassment, intimidation, and unwarranted invasion of privacy by prohibiting the unnecessary disclosure of their addresses and telephone numbers.

Sec. 12.61.110. Confidentiality of victim and witness addresses and telephone numbers.
The residence and business addresses and telephone numbers of a victim of a crime or witness to a crime are confidential. A report, paper, picture, photograph, court file, or other document that relates to a crime and contains the residence or business address or telephone number of a victim or witness, and that is in the custody or possession of a public officer or employee, may not be made available for public inspection unless the residence and business addresses and telephone numbers of all victims and witnesses have been deleted.

Sec. 12.61.120. Disclosure to defense; contacts with victims and witnesses.
(a) The prosecution in a criminal case may not be required to furnish to the defendant personally the address or telephone number of a victim or witness absent a showing of good cause as determined by the court. Except as provided in (b) of this section, good cause exists when the defendant is proceeding without counsel. When a defendant is represented by counsel, the address and telephone number of a victim or witness may be disclosed to the defendant's counsel, but the court shall order the defendant's counsel to not disclose the information to the defendant.

(b) If the defendant is proceeding without counsel in a case involving a charged violation of AS 11.41, AS 11.46.300 — 11.46.330, AS 11.56.740, 11.56.807, 11.56.810, AS 11.61.190 — 11.61.210, or a crime involving domestic violence and the court finds that the defendant may pose a continuing threat to the victim of or witness to the offense charged, the court shall protect the address and telephone number of the victim or witness by providing the information only to a person specified by the court or by imposing other restrictions that the court considers necessary. When an address or telephone number is released to a person specified by the court under this subsection, that person, who shall be ordered not to disclose the information to the defendant, shall contact the victim or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or witness only in the presence of that person.

(c) If a defendant or a person acting on behalf of a defendant contacts the victim of an offense with which the defendant is or could be charged, the person shall clearly inform the victim

(1) of the person's identity and specific association with the defendant;

(2) that the victim does not have to talk to the person unless the victim wishes; and

(3) that the victim may have a prosecuting attorney or other person present during an interview.

(d) If a defendant or a person acting on behalf of a defendant wishes to make a recording of statements of the victim of an offense with which the defendant is or could be charged in this or another jurisdiction, or of a witness, the person shall, before recording begins, obtain the consent of the victim or witness to record the statement by clearly informing the victim or witness (1) of the information set out in (c) of this section, (2) that the statement will be recorded if the victim or witness consents, and (3) that the victim or witness may obtain a transcript or other copy of the recorded statement upon request. When recording begins, the person making the recording shall indicate in the recording that the victim or witness has been informed as required by this subsection, and the victim or witness shall state in the recording that consent of the victim or witness to the recording has been given.

(e) If a victim or witness requests a transcript or other copy of a recorded statement taken under (d) of this section, the defense shall prepare the transcript or other copy and provide it to the person whose statement was recorded.

(f) In this section, “recording” means capturing a statement of a person, whether by magnetic tape or other electronic or electromagnetic means.

Sec. 12.61.125. Victims and witnesses of sexual offenses.

(a) The defendant accused of a sexual offense, the defendant's counsel, or an investigator or other person acting on behalf of the defendant, may not

(1) notwithstanding AS 12.61.120, contact the victim of the offense or a witness to the offense if the victim or witness, or the parent or guardian of the victim or witness if the victim or witness is a minor, has informed the defendant or the defendant's counsel in writing or in person that the victim or witness does not wish to be contacted by the defense; a victim or witness who has not informed the defendant or the defendant's counsel in writing or in person that the victim does not wish to be contacted by the defense is entitled to rights as provided in AS 12.61.120;

(2) obtain a statement from the victim of the offense or a witness to the offense, unless,

(A) if the statement is taken as a recording, the recording is taken in compliance with AS 12.61.120, and written authorization is first obtained from the victim or witness, or from the

parent or guardian of the victim or witness if the victim or witness is a minor; the written authorization must state that the victim or witness is aware that there is no legal requirement that the victim or witness talk to the defense; or

(B) if the statement is not taken as a recording, written authorization is first obtained from the victim or witness, or from the parent or guardian of the victim or witness if the victim or witness is a minor; the written authorization must state that the victim or witness is aware that there is no legal requirement that the victim or witness talk to the defense; a victim or witness making a statement under this subparagraph remains entitled to rights as provided in AS 12.61.120.

(b) A defendant who is the parent or guardian of a minor victim or witness may not provide the authorization required under (a) of the section.

(c) If an attorney, or a person acting on behalf of the defendant for an attorney, violates this section, the court shall refer the violation to the Disciplinary Board of the Alaska Bar Association as a grievance.

(d) In this section,

(1) "recording" has the meaning given in AS 12.61.120;

(2) "sexual offense" means a violation of AS 11.41.410 — 11.41.470.

Sec. 12.61.127. Inadmissibility of statements taken in violation of AS 12.61.120 or 12.61.125. A statement obtained from a victim or witness in violation of AS 12.61.120 or 12.61.125 is presumed inadmissible in a prosecution of the defendant. To overcome the presumption of inadmissibility, the defendant must prove by clear and convincing evidence that

(1) the statement is reliable;

(2) similar evidence is unavailable from any other source; and

(3) failure to introduce the statement would substantially undermine the reliability of the fact-finding process and result in manifest injustice.

Sec. 12.61.130. Disclosure during court proceedings.

(a) During a trial or hearing related to a criminal prosecution, the residence and business addresses and telephone numbers of a victim of or witness to the charged offense may not be disclosed in open court, and a victim or witness may not be required to provide the addresses or telephone numbers in response to questioning, unless the court determines that the information is necessary and relevant to the facts of the case. The burden to establish the need and relevance for disclosure is on the party seeking disclosure. Before ordering disclosure, the court shall take appropriate measures to minimize the risk of personal harm to the victim or witness that would result from the disclosure.

(b) The address or telephone number of a victim of or witness to a charged offense may not be placed in the court file or court documents relating to that offense except when

(1) the address is used to identify the place of the crime; or

(2) the address or telephone number is contained in a transcript of a court proceeding and disclosure of the address or telephone number was ordered under (a) of this section.

Sec. 12.61.140. Disclosure of victim's name.

(a) The portion of the records of a court or law enforcement agency that contains the name of the victim of an offense under AS 11.41.300(a)(1)(C) or 11.41.410 — 11.41.460

(1) shall be withheld from public inspection, except with the consent of the court in which the case is or would be prosecuted; and

(2) is not a public record under AS 40.25.110 — 40.25.125.

(b) In all written court records open to public inspection, the name of the victim of an offense under AS 11.41.300(a)(1)(C) or 11.41.410 — 11.41.460 may not appear. Instead, the victim's initials shall be used. However, a sealed record containing the victim's name shall be kept by the court in order to ensure that a defendant is not charged twice for the same offense.

Sec. 12.61.150. Public and media access.

AS 12.61.100 — 12.61.150 may not be construed to require the court to exclude the public from any stage of the criminal proceeding or to interfere with the right of news media to report information lawfully obtained.

Article 3. General Provisions.

Sec. 12.61.900. Definitions.

In this chapter,

(1) “crime involving domestic violence” has the meaning given in AS 18.66.990;

(2) “person acting on behalf of a defendant” includes the defendant's attorney, an agent of the defendant or the defendant's attorney, or a person specified by the court under AS 12.61.120(b) or an agent of that person, but does not include the defendant;

(3) “victim” has the meaning given in AS 12.55.185;

(4) “witness” means a person contacted in connection with a criminal case because the person may have knowledge or information about the criminal case.

Chapter 62. Criminal Justice Information and Records Checks.

Article 1. Criminal Justice Information.

Sec. 12.62.005. Intent.

It is the intent of the legislature that the department administer the provisions of this chapter in a manner that protects victims of crime, allows the proper administration of justice, and avoids vigilantism.

Secs. 12.62.010 — 12.62.015. Regulations; collection and security of information. [Repealed, § 4 ch 118 SLA 1994. For current law, see AS 12.62.110 — 12.62.150.]
Sec. 12.62.017. Annual report to commission. [Repealed, § 35 ch 126 SLA 1994.]
Secs. 12.62.020 — 12.62.035. Collection, storage, access, and use. [Repealed, § 4 ch 118 SLA 1994. For current law, see AS 12.62.160.]
Secs. 12.62.040 — 12.62.070. Security, updating; interstate exchange of information; remedies; definitions. [Repealed, § 4 ch 118 SLA 1994. For current law, see AS 12.62.170 — 12.62.190.]
Sec. 12.62.100. Criminal justice information advisory board; functions and duties.

Sec. 12.62.105. Duties of the department regarding criminal justice information.
The department shall advise criminal justice agencies on matters pertaining to the development and operation of the central repository described in AS 12.62.110(1) and other criminal justice information systems, including providing advice about regulations and procedures, and estimating the resources and costs of those resources, needed to carry out the provisions of this chapter.

Sec. 12.62.110. Duties of the commissioner regarding information systems.
The commissioner shall

(1) develop and operate a criminal justice information system to serve as the state's central repository of criminal history record information, and to collect, store, and release criminal justice information as provided in this chapter;

(2) provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes, and compile and publish statistics and other information on the nature and extent of crime in the state;

(3) cooperate with other agencies of the state, the criminal record repositories of other states, the Interstate Identification Index, the National Law Enforcement Telecommunications System, the National Crime Information Center, and other appropriate agencies or systems, in the development and operation of an effective interstate, national, and international system of criminal identification, records, and statistics; and

(4) in accordance with AS 44.62 (Administrative Procedure Act), adopt regulations necessary to implement the provisions of this chapter; in adopting the regulations, the commissioner may consult with affected law enforcement agencies regarding the fiscal implications of the regulations; regulations may not be adopted under this section that affect procedures of the court system.

Sec. 12.62.120. Reporting of criminal justice information.
(a) The commissioner, by regulation and after consultation with affected agencies, may designate which criminal justice agencies are responsible for reporting the events described in (b) of this section. An agency designated under this subsection shall report the events described in (b) of this section to the department, at the time, in the manner, and in the form specified by the department.

(b) An agency designated under (a) of this section shall report the following events to the department if they occur in connection with an arrestable offense:

(1) the issuance, receipt, withdrawal, quashing, or execution of a judicial arrest warrant, a governor's warrant of arrest for extradition, or a parole arrest warrant;

(2) an arrest, with or without a warrant, or an escape after arrest;

(3) the release of a person after arrest without charges being filed;

(4) the admittance to, release or escape from, or unlawful evasion of, official detention in a correctional facility, either pretrial or post-trial;

(5) a decision by a prosecutor or a grand jury not to commence criminal proceedings, to defer or indefinitely postpone prosecution, or to decline to prosecute charges;

(6) the filing of a charging document, including an indictment, criminal complaint, criminal information, or a petition or other document showing a violation of bail, probation, or parole, or the amendment of a charging document;

(7) an acquittal, dismissal, conviction, or other disposition of charges set out in a charging document described in (6) of this subsection;

(8) the imposition of a sentence or the granting of a suspended imposition of sentence under AS 12.55.085;

(9) the commencement or expiration of parole or probation supervision and the conditions of that parole or probation supervision;

(10) the commitment to or release from a facility, designated by the Department of Family and Community Services, of a person who was previously accused of a crime but who has been found to be incompetent to stand trial or found not criminally responsible;

(11) the filing of an action in an appellate court or a federal court relating to a conviction or sentence;

(12) a judgment of a court that reverses, remands, vacates, or reinstates a criminal charge, conviction, or sentence;

(13) a pardon, reprieve, executive clemency, commutation of sentence, or other change in the length or terms of a sentence by executive or judicial action;

(14) the release of a person on bail and the conditions of that release; and

(15) any other event required to be reported under regulations adopted under this chapter.

Sec. 12.62.130. Reporting of uniform crime information.
A criminal justice agency shall submit to the department, at the time, in the manner, and in the form specified by the department, data regarding crimes committed within that agency's jurisdiction. At a minimum, the department shall require a criminal justice agency to report each felony sex offense committed in the agency's jurisdiction. The department may withhold grant funding to a criminal justice agency that fails to report data as required by this section. The department shall compile, and provide to the governor and the attorney general, an annual report concerning the number and nature of criminal offenses committed, the disposition of the offenses, and any other data the commissioner finds appropriate relating to the method, frequency, cause, and prevention of crime. In this section, “sex offense” has the meaning given in AS 12.63.100.

Sec. 12.62.140. Reporting of information regarding wanted persons and stolen property.
(a) A criminal justice agency shall report to the department, at the time, in the manner, and in the form specified by the department, data regarding

(1) a person the agency is trying to locate, whether that person is wanted in connection with the commission of a crime, and the discovery, if any, of that person;

(2) the theft, and recovery if any, of an identifiable motor vehicle; and

(3) the theft, and recovery if any, of identifiable property.

(b) A criminal justice agency, annually and at other times if requested by the department, shall confirm whether information already reported under (a) of this section continues to be valid, and shall cooperate with the department in periodic audits to validate the information reported.

Sec. 12.62.150. Completeness, accuracy, and security of criminal justice information.
(a) A criminal justice agency shall

(1) adopt reasonable procedures to ensure that criminal justice information that the agency maintains is accurate and complete;

(2) notify a criminal justice agency known to have received information of a material nature that is inaccurate or incomplete;

(3) provide adequate procedures and facilities to protect criminal justice information from unauthorized access and from accidental or deliberate damage by theft, sabotage, fire, flood, wind, or power failure;

(4) provide procedures for screening, supervising, and disciplining agency personnel in order to minimize the risk of security violations;

(5) provide training for employees working with or having access to criminal justice information;

(6) if maintaining criminal justice information within an automated information system operated by a noncriminal justice agency, develop or approve system operating procedures to comply with this chapter or regulations adopted under this chapter, and monitor the implementation of those procedures to ensure that they are effective; and

(7) maintain, for at least three years, and make available for audit purposes,
(A) records showing the accuracy and completeness of information maintained by the agency in a criminal justice information system; and

(B) records required to be maintained under AS 12.62.160(c)(4).

(b) The department shall adopt reasonable procedures designed to ensure that information about arrests and criminal charges that is stored in a criminal justice information system can be linked with information about the disposition of those arrests and charges.

(c) Every two years the department shall undertake an audit, and every four years shall obtain an independent audit, of the department's criminal justice information system that serves as the central repository and of a sample of other state and local criminal justice information systems, to

verify adherence to the requirements of this chapter and other applicable laws.

Sec. 12.62.160. Release and use of criminal justice information; fees.
(a) Criminal justice information and the identity of recipients of criminal justice information are confidential and exempt from disclosure under AS 40.25. The existence or nonexistence of criminal justice information may not be released to or confirmed to any person except as provided in this section and AS 12.62.180(d).

(b) Subject to the requirements of this section, and except as otherwise limited or prohibited by other provision of law or court rule, criminal justice information
(1) may be provided to a person when, and only to the extent, necessary to avoid imminent danger to life or extensive damage to property;

(2) may be provided to a person to the extent required by applicable court rules or under an order of a court of this state, another state, or the United States;

(3) may be provided to a person if the information is commonly or traditionally provided by criminal justice agencies in order to identify, locate, or apprehend fugitives or wanted persons or to recover stolen property, or for public reporting of recent arrests, charges, and other criminal justice activity;

(4) may be provided to a criminal justice agency for a criminal justice activity;

(5) may be provided to a government agency when necessary for enforcement of or for a purpose specifically authorized by state or federal law;

(6) may be provided to a person specifically authorized by a state or federal law to receive that information;

(7) in aggregate form may be released to a qualified person, as determined by the agency, for criminal justice research, subject to written conditions that assure the security of the information and the privacy of individuals to whom the information relates;

(8) may be provided to a person for any purpose, except that information may not be released if the information is nonconviction information or correctional treatment information;

(9) including information relating to a serious offense, may be provided to an interested person if the information is requested for the purpose of determining whether to grant a person supervisory or disciplinary power over a minor or dependent adult; and

(10) may be provided to the person who is the subject of the information.

(c) Unless otherwise provided for in regulations adopted by the commissioner, if access to criminal justice information is permitted under (b) of this section
(1) the information may be released only by the agency maintaining that information;

(2) the information may not be released under this section without first determining that the information is the most current information available within that criminal justice information system, unless the system is incapable of providing the most current information available within the necessary time period;

(3) the information may not be released under this section until the person requesting the information establishes the identity of the subject of the information by fingerprint comparison or another reliable means of identification approved by the department;

(4) the information may not be released under this section unless the criminal justice agency releasing the information records, and maintains for at least three years, the name of the person or agency that is to receive the information, the date the information was released, the nature of the information, and the statutory authority that permits the release; and

(5) information released under this section may be used only for the purpose or activity for which the information was released.

(d) Notwithstanding AS 40.25, a criminal justice agency may charge fees, established by regulation or municipal ordinance, for processing requests for records under this chapter, unless the request is from a criminal justice agency or is required for purposes of discovery in a criminal case. In addition to fees charged under AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint system, the department may charge fees for other services in connection with the processing of information requests, including fees for contacting other jurisdictions to determine the disposition of an out-of-state arrest or to clarify the nature of an out-of-state conviction. The department may also collect and account for fees charged by the Federal Bureau of Investigation for processing fingerprints forwarded to the bureau by the department. The annual estimated balance in the account maintained by the commissioner of administration under AS 37.05.142 may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter.

(e) When an interested person requests information under (b)(9) of this section, the department may also obtain a national criminal history record check under AS 12.62.400 if the person submits the fingerprints and fees required for that check under (d) of this section.

Sec. 12.62.170. Correction of criminal justice information.

(a) A criminal justice agency shall correct, modify, or add an explanatory notation to criminal history records that the agency is responsible for maintaining if the revision is necessary to achieve accuracy or completeness.

(b) A person may submit a written request to the head of the agency responsible for maintaining criminal justice information asking the agency to correct, modify, or add any information or explanatory notation to criminal justice information about the person that the person believes is inaccurate or incomplete. The decision of the head of the agency is the final administrative decision on the request.

(c) The person requesting revision of criminal justice information may appeal an adverse decision of the agency to the court under applicable rules of procedure for appealing the decision of an administrative agency. The appellant bears the burden on appeal of showing that the agency decision was in error. An appeal filed under this subsection may not collaterally attack a court judgment or a decision by prison, probation, or parole authorities, or any other action that is or could have been subject to appeal, post-conviction relief, or other administrative remedy.

Sec. 12.62.180. Sealing of criminal justice information.

(a) Under this section, a criminal justice agency may seal only the information that the agency is responsible for maintaining.

(b) A person may submit a written request to the head of the agency responsible for maintaining past conviction or current offender information, asking the agency to seal such information about the person that, beyond a reasonable doubt, resulted from mistaken identity or false accusation. The decision of the head of the agency is the final administrative decision on the request.

(c) The person requesting that the information be sealed may appeal an adverse decision of the agency to the court under applicable rules of procedure for appealing the decision of an administrative agency. The appellant bears the burden on appeal of showing that the agency decision was clearly mistaken. An appeal filed under this subsection may not collaterally attack a court judgment or a decision by prison, probation, or parole authorities, or any other action that is or could have been subject to appeal, post-conviction relief, or other administrative remedy.

(d) A person about whom information is sealed under this section may deny the existence of the information and of an arrest, charge, conviction, or sentence shown in the information. Information that is sealed under this section may be provided to another person or agency only

(1) for record management purposes, including auditing;

(2) for criminal justice employment purposes;

(3) for review by the subject of the record;

(4) for research and statistical purposes;

(5) when necessary to prevent imminent harm to a person; or

(6) for a use authorized by statute or court order.

Sec. 12.62.190. Purging of criminal justice information.

(a) A criminal justice agency may purge only the criminal justice information that the agency is responsible for maintaining. An agency may determine when and what information will be purged, under (b) of this section.

(b) Criminal justice information may be purged if the agency determines that the information is devoid of usefulness to a criminal justice agency due to the

(1) death of the subject of the information;

(2) age of the information;

(3) nature of the offense or of the information;

(4) volume of the agency's records or other record management considerations.

Sec. 12.62.200. Civil action and defense.

(a) Failure to comply with a requirement of this chapter or a regulation adopted under this chapter is not a basis for civil liability, but may be the basis for employee discipline or

administrative action to restrict a person's or agency's access to information. However, a person whose criminal justice information has been released or used in knowing violation of this chapter or a regulation adopted under this chapter may bring an action for damages in the superior court.

(b) It is a defense to a civil or criminal action based on a violation of this chapter, or regulations adopted under this chapter, if a person relied in good faith upon the provisions of this chapter or of other laws or regulations governing maintenance, release, or use of criminal justice information, or upon policies or procedures established by a criminal justice agency.

Article 2. National Criminal History Record Check.

Sec. 12.62.400. National criminal history record checks for employment, licensing, and other noncriminal justice purposes.

(a) To obtain a national criminal history record check for determining a person's qualifications for a license, permit, registration, employment, or position, a person shall submit the person's fingerprints to the department with the fee established by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the person for the purpose of evaluating a person's qualifications for

(1) a license or conditional contractor's permit to manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage under AS 04.09;

(2) licensure as a mortgage lender, a mortgage broker, or a mortgage loan originator under AS 06.60;

(3) admission to the Alaska Bar Association under AS 08.08;

(4) licensure to practice audiology or speech-language pathology under AS 08.11;

(5) licensure as a collection agency operator under AS 08.24;

(6) a certificate of fitness to handle explosives under AS 08.52;

(7) licensure as a massage therapist under AS 08.61;

(8) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(9) licensure as a pharmacist or pharmacy technician under AS 08.80;

(10) licensure as a physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant under AS 08.84;

(11) certification as a real estate appraiser under AS 08.87;

(12) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(13) a teacher certificate under AS 14.20;

(14) a registration or license to operate a marijuana establishment under AS 17.38;

(15) admittance to a police training program under AS 18.65.230 or for certification as a police officer under AS 18.65.240 if that person's prospective employer does not have access to a

criminal justice information system;

(16) licensure as a security guard under AS 18.65.400 — 18.65.490;

(17) employment as a village public safety officer under AS 18.65.672 or certification as a village public safety officer under AS 18.65.682;

(18) a concealed handgun permit under AS 18.65.700 — 18.65.790;

(19) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(20) serving and executing process issued by a court by a person designated under AS 22.20.130;

(21) a school bus driver license under AS 28.15.046;

(22) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(23) registration as a broker-dealer, agent, investment adviser representative, or investment adviser under AS 45.56.300 — 45.56.350;

(24) licensure, license renewal, certification, certification renewal, or payment from the Department of Health of an individual and an entity subject to the requirements for a criminal history check under AS 47.05.310, including

(A) a public home care provider described in AS 47.05.017;

(B) a provider of home and community-based waiver services financed under AS 47.07.030(c);

(C) a case manager to coordinate community mental health services under AS 47.30.530;

(D) an entity listed in AS 47.32.010(b) and (c), including an owner, officer, director, member, partner, employee, volunteer, or contractor of an entity; or

(E) an individual or entity not described in (A) — (D) of this paragraph that is required by statute or regulation to be licensed or certified by the Department of Health or that is eligible to receive payments, in whole or in part, from the Department of Health to provide for the health, safety, and welfare of persons who are served by the programs administered by the Department of Health;

(25) licensure, license renewal, certification, or certification renewal by the Department of Family and Community Services of an individual or entity, or payment from the Department of Family and Community Services to an individual or entity, subject to the requirements for a criminal history check under AS 47.05.310 for a foster home, child placement agency, and runaway shelter listed in AS 47.32.010(c), including an owner, officer, director, member, partner, employee, volunteer, or contractor of an entity.

(b) Notwithstanding (a) of this section, an applicant for a license under AS 06.60 may submit the applicant's fingerprints to the Nationwide Mortgage Licensing System and Registry. In this subsection, “Nationwide Mortgage Licensing System and Registry” has the meaning given in 12 U.S.C. 5102.

(c) To obtain a national criminal history record check for determining a current or prospective employee's qualifications under AS 39.90.210 or a contractor's qualifications under AS 36.30.960, the agency or the procurement officer shall submit the current or prospective employee's or contractor's fingerprints to the department with the fee established by AS 12.62.160. The department shall submit the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the current or prospective employee or contractor for the purpose of evaluating a person's qualifications under AS 36.30.960 and AS 39.90.210. In this subsection, unless the context otherwise requires,

(1) “agency” has the meaning given in AS 39.90.290;

(2) “contractor” has the meaning given in AS 36.30.960;

(3) “employee” has the meaning given in AS 39.90.290.

Article 3. General Provisions.

Sec. 12.62.900. Definitions.

In this chapter,

(1) “agency” means a criminal justice agency;

(2) “automatic data processing” has the meaning given in AS 44.21.170;

(3) “commissioner” means the commissioner of public safety;

(4) “complete” means that a criminal history record contains information about the disposition of criminal charges occurring in the state and entered within 90 days after the disposition occurred;

(5) “correctional treatment information” means information about an identifiable person, excluding past conviction information or current offender information, collected to monitor that person in a correctional facility or while under correctional supervision, including the person's current or past institutional behavior, medical or psychological condition, or rehabilitative progress;

(6) “crime involving domestic violence” has the meaning given in AS 18.66.990;

(7) “criminal history record information” means information that contains

(A) past conviction information;

(B) current offender information;

(C) criminal identification information;

(8) “criminal identification information” means fingerprints, photographs, and other information or descriptions that identify a person as having been the subject of a criminal arrest or prosecution;

(9) “criminal justice activity” means

(A) investigation, identification, apprehension, detention, pretrial or post-trial release, prosecution, adjudication, or correctional supervision or rehabilitation of a person accused or convicted of a crime;

(B) collection, storage, transmission, and release of criminal justice information; or

(C) the employment of personnel engaged in activities described in (A) or (B) of this paragraph;

(10) “criminal justice agency” means
(A) a court with criminal jurisdiction or an employee of that court;

(B) a government entity or subdivision of a government entity that allocates a substantial portion of its budget to a criminal justice activity under a law, regulation, or ordinance; or

(C) an individual or organization obligated to undertake a criminal justice activity under a written agreement with an agency described in (A) or (B) of this paragraph; as used in this subparagraph, “organization” includes an interagency or interjurisdictional task force formed to further common criminal justice goals;

(11) “criminal justice information” means any of the following, other than a court record, a record of traffic offenses maintained for the purpose of regulating drivers' licenses, or a record of a juvenile subject to the jurisdiction of a court under AS 47.12:
(A) criminal history record information;

(B) nonconviction information;

(C) correctional treatment information;

(D) information relating to a person to be located, whether or not that person is wanted in connection with the commission of a crime;

(12) “criminal justice information system” means an automatic data processing system used to collect, store, display, or transmit criminal justice information, and that permits information within the system, without action by the agency maintaining the information, to be directly accessed by another principal department of the state, another branch of state government, an agency of another state or the federal government, or by a political subdivision of a state or the federal government;

(13) “current offender information” means information showing that an identifiable person
(A) is currently under arrest for or is charged with a crime and
(i) prosecution is under review or has been deferred by written or oral agreement;

(ii) a warrant exists for the person's arrest; or

(iii) less than a year has elapsed since the date of the arrest or filing of the charges, whichever is latest;

(B) is currently released on bail or on other conditions imposed by a court in a criminal case, either pretrial or post-trial, including the conditions of the release;

(C) is currently serving a criminal sentence or is under the custody of the commissioner of corrections for supervision purposes; “current offender information” under this subparagraph includes
(i) the terms and conditions of any sentence, probation, suspended imposition of sentence, discretionary or mandatory parole, furlough, executive clemency, or other release; and

(ii) the location of any place of incarceration, halfway house, restitution center, or other correctional placement to which the person is assigned; or

(D) has had a criminal conviction or sentence reversed, vacated, set aside, or has been the subject of executive clemency;

(14) "department" means the Department of Public Safety;

(15) "dependent adult" means an adult with a physical or mental disability who requires assistance or supervision with the activities of daily living;

(16) "information" means, unless the context clearly indicates otherwise, data compiled within a criminal justice information system;

(17) "interested person" means a person as defined in AS 01.10.060 that employs, appoints, or permits a person to serve with or without compensation in a position in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult;

(18) "nonconviction information" means information that an identifiable person was arrested or that criminal charges were filed or considered against the person and

(A) a prosecutor or grand jury has elected not to begin criminal proceedings against the person and at least a year has elapsed since that decision;

(B) criminal charges against the person have been dismissed or the person has been acquitted and at least a year has elapsed since that action; or

(C) there is no indication of the disposition of the criminal charges or the arrest and at least a year has elapsed since the arrest, filing of the charges, or referral of the matter for review by a prosecutor, whichever is latest;

(19) "past conviction information" means information showing that an identifiable person who has been unconditionally discharged has previously been convicted of a crime; "past conviction information" includes

(A) the terms of any sentence, probation, suspended imposition of sentence, or discretionary or mandatory parole; and

(B) information that a criminal conviction or sentence has been reversed, vacated, set aside, or been the subject of executive clemency;

(20) "purge" means to delete or destroy information in a criminal justice information system so that there can be no access to the information;

(21) "seal" means to retain information in a criminal justice information system subject to special restrictions on access or dissemination;

(22) "serious offense" means a conviction for a violation or for an attempt, solicitation, or conspiracy to commit a violation of any of the following laws, or of the laws of another jurisdiction with substantially similar elements:

(A) a felony offense;

(B) a crime involving domestic violence;

(C) AS 11.41.410 — 11.41.470;

(D) AS 11.51.130 or 11.51.200 — 11.56.210;

(E) AS 11.61.110(a)(7) or 11.61.125;

(F) AS 11.66.100 — 11.66.130;

(G) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160; or

(H) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420, if committed before January 1, 1980.

Chapter 63. Registration of Sex Offenders.

Sec. 12.63.010. Registration of sex offenders and related requirements.
(a) A sex offender or child kidnapper who is physically present in the state shall register as provided in this section. The sex offender or child kidnapper shall register
(1) within the 30-day period before release from an in-state correctional facility;

(2) by the next working day following conviction for a sex offense or child kidnapping if the sex offender is not incarcerated at the time of conviction; or

(3) by the next working day of becoming physically present in the state.

(b) A sex offender or child kidnapper required to register under (a) of this section shall register with the Department of Corrections if the sex offender or child kidnapper is incarcerated or in person at the Alaska state trooper post or municipal police department located nearest to where the sex offender or child kidnapper resides at the time of registration. To fulfill the registration requirement, the sex offender or child kidnapper shall
(1) complete a registration form that includes the following information, if applicable:
(A) the sex offender's or child kidnapper's full name, mailing and physical addresses, school address, telephone numbers used by the sex offender or child kidnapper, social security number, passport information, citizenship status, physical address of employment, name of employer, job title, and date of birth;

(B) each conviction for a sex offense or child kidnapping for which the duty to register has not terminated under AS 12.63.020, the date of the sex offense or child kidnapping convictions, the place and court of the sex offense or child kidnapping convictions, and whether the sex offender or child kidnapper has been unconditionally discharged from the conviction for a sex offense or child kidnapping and the date of the unconditional discharge; if the sex offender or child kidnapper asserts that the offender or kidnapper has been unconditionally discharged, the offender or kidnapper shall supply proof of that discharge acceptable to the department;

(C) all aliases used;

(D) the sex offender's or child kidnapper's driver's license number;

(E) the description, license numbers, and vehicle identification numbers of motor vehicles, including watercraft, aircraft, motorcycles, and recreational vehicles, the sex offender or child

kidnapper has access to, regardless of whether that access is regular or not;

(F) any identifying features of the sex offender or child kidnapper;

(G) anticipated changes of address and any temporary lodging used by the sex offender or child kidnapper for seven days or more;

(H) a statement concerning whether the offender or kidnapper has had treatment for a mental abnormality or personality disorder since the date of conviction for an offense requiring registration under this chapter;

(I) each electronic mail address, instant messaging address, and other Internet communication identifier used by the sex offender or child kidnapper; and

(J) professional licensing information;

(2) allow the Alaska state troopers, Department of Corrections, municipal police, or any peace officer to take a complete set of the sex offender's or child kidnapper's fingerprints and palm prints and to take the sex offender's or child kidnapper's photograph.

(c) If a sex offender or child kidnapper changes residence or obtains a change of name under AS 09.55.010 or AS 25.24.165 after having registered under (a) of this section, the sex offender or child kidnapper shall provide written notice of the change by the next working day following the change to the Alaska state trooper post or municipal police department located nearest to the new residence or, if the residence change is out of state, to the central registry. If a sex offender or child kidnapper establishes or changes an electronic mail address, instant messaging address, or other Internet communication identifier, the sex offender or child kidnapper shall, by the next working day, notify the department in writing of the changed or new address or identifier.

(d) A sex offender or child kidnapper required to register

(1) for 15 years under (a) of this section and AS 12.63.020 shall, annually, during the term of a duty to register under AS 12.63.020, on a date set by the department at the time of the sex offender's or child kidnapper's initial registration, provide written verification to the department, in the manner required by the department, of the information provided under (b)(1) of this section and notice of any changes to the information previously provided under (b)(1) of this section;

(2) for life under (a) of this section and AS 12.63.020 shall, not less than quarterly, on a date set by the department, provide written verification to the department, in the manner required by the department, of the information provided under (b)(1) of this section and notice of any changes to the information previously provided under (b)(1) of this section.

(e) The registration form required to be submitted under (b) of this section and the annual or quarterly verifications must be sworn to by the offender or kidnapper and contain an admonition that a false statement shall subject the offender or kidnapper to prosecution for perjury.

(f) If a sex offender or child kidnapper plans to leave the state for international travel after having registered under (a) of this section, the sex offender or child kidnapper shall provide to the department or a municipal police department in the state written notice of the plan for any intended travel outside the United States at least 21 days before leaving the state for international travel.

(g) If a sex offender or child kidnapper is away from the physical address provided to the department under (b)(1)(A) of this section for a period of seven days or more, the sex offender or child kidnapper shall notify the department in writing of the address being used by the sex

offender or child kidnapper while away from the physical address provided under (b)(1)(A) of this section.

(h) In this section, “correctional facility” has the meaning given in AS 33.30.901.

Sec. 12.63.020. Duration of sex offender or child kidnapper duty to register.

(a) The duty of a sex offender or child kidnapper to comply with the requirements of AS 12.63.010 is as follows:

(1) for a sex offender or child kidnapper, as that term is defined in AS 12.63.100(6)(A), for each sex offense or child kidnapping, the duty

(A) continues for the lifetime of a sex offender or child kidnapper convicted of

(i) one aggravated sex offense; or

(ii) two or more sex offenses, two or more child kidnappings, or one sex offense and one child kidnapping; for purposes of this section, a person convicted of indecent exposure before a person under 16 years of age under AS 11.41.460 more than two times has been convicted of two or more sex offenses;

(B) ends 15 years following the sex offender's or child kidnapper's unconditional discharge from a conviction for a single sex offense that is not an aggravated sex offense or for a single child kidnapping if the sex offender or child kidnapper has supplied proof that is acceptable to the department of the unconditional discharge; the registration period under this subparagraph

(i) is tolled for the period that a sex offender or child kidnapper fails to comply with the requirements of this chapter or is incarcerated for the offense or kidnapping for which the offender or kidnapper is required to register or for any other offense;

(ii) may include the time a sex offender or child kidnapper was absent from this state if the sex offender or child kidnapper has complied with any sex offender or child kidnapper registration requirements of the jurisdiction in which the offender or kidnapper was located and if the sex offender or child kidnapper provides the department with proof of the compliance while the sex offender or child kidnapper was absent from this state; and

(iii) continues for a sex offender or child kidnapper who has not supplied proof acceptable to the department of the offender's or kidnapper's unconditional discharge for the sex offense or child kidnapping requiring registration;

(2) for a sex offender or child kidnapper, as that term is defined in AS 12.63.100(6)(B), the duty continues for the period determined by the department under (b) of this section.

(b) The department shall adopt, by regulation,

(1) procedures to notify a sex offender or child kidnapper

(A) who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping;

(B) as that term is defined in AS 12.63.100(6)(B), of the duration of the sex offender or child kidnapper's duty under (a) of this section; in adopting regulations under this subparagraph, the department shall

(i) consider the period of registration required in the other jurisdiction; and

(ii) provide for tolling of the registration period if the sex offender or child kidnapper fails to comply with the requirements of this chapter or is incarcerated;

(2) a requirement that an offender or kidnapper supply proof acceptable to the department of unconditional discharge and the date it occurred.

Sec. 12.63.030. Notification of other jurisdictions.
(a) If a sex offender or child kidnapper notifies the department that the sex offender or child kidnapper is moving from the state, the department shall notify the Federal Bureau of Investigation and the state where the sex offender or child kidnapper is moving of the sex offender's or child kidnapper's intended address.

(b) If a sex offender or child kidnapper fails to register or to verify the sex offender's or child kidnapper's address and registration under this chapter, or the department does not know the location of a sex offender or child kidnapper required to register under this chapter, the department shall immediately notify the Federal Bureau of Investigation.

Sec. 12.63.100. Definitions.
In this chapter,
(1) “aggravated sex offense” means
(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, “sexual offense” has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:
(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree;

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410, 11.41.434, or a similar law of another jurisdiction or a similar provision under a former law of this state; or

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under
(i) AS 26.05.890, or a similar law of another jurisdiction, if the person engaged in or attempted to engage in sexual penetration; or

(ii) AS 26.05.893, or a similar law of another jurisdiction, if the prohibited sexual activity in which the member of the militia engaged or attempted to engage is sexual penetration;

(2) “child kidnapping” means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping;

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping if the victim was under 18 years of age at the time of the offense;

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.300, or a similar law of another jurisdiction or a similar provision under a former law of this state, if the victim was under 18 years of age at the time of the offense; or

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under AS 26.05.935(b), or a similar law of another jurisdiction, if the

(i) member of the militia commits the enumerated offense of kidnapping, punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice); and

(ii) victim was under 18 years of age at the time of the offense;

(3) "conviction" means that an adult, or a juvenile charged as an adult under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury, of a sex offense or child kidnapping regardless of whether the judgment was set aside under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of a pardon or other executive clemency; "conviction" does not include a judgment that has been reversed or vacated by a court;

(4) "department" means the Department of Public Safety;

(5) "sexual contact" has the meaning given in AS 11.81.900;

(6) "sex offender or child kidnapper" means

(A) a person convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or

(B) a person charged and convicted as an adult of an offense that requires registration as a sex offender or child kidnapper in another jurisdiction;

(7) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree;

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 — 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 — 11.41.458;

(iv) AS 11.41.460 or AS 26.05.900(c) if the indecent exposure is before a person under 16 years of age and the offender has previously been convicted under AS 11.41.460 or AS 26.05.900(c);

(v) AS 11.61.125 — 11.61.128;

(vi) AS 11.66.130(a)(2)(B) or AS 26.05.900(b) if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200;

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense;

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under former AS 11.66.100(e);

(x) AS 26.05.890 if the person engaged in sexual penetration or sexual contact with the victim;

(xi) AS 26.05.890 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim;

(xii) AS 26.05.893 if the person engaged in sexual penetration or sexual contact with the victim;

(xiii) AS 26.05.900(a) if the victim is under 18 years of age at the time of the offense;

(xiv) AS 26.05.900 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim;

(xv) AS 11.61.123 if the offender is subject to punishment under AS 11.61.123(g)(1) or (2);

(xvi) AS 11.66.137;

(xvii) AS 11.61.130(a)(2); or

(xviii) AS 11.66.110 and 11.66.120;

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under AS 26.05.935(b), or a similar law of another jurisdiction, if the member of the militia commits one of the following enumerated offenses punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice):

(i) child sexual abuse material; or

(ii) pandering and prostitution if the person who is induced, enticed, caused, or procured to engage in a sexual act is under 20 years of age at the time of the offense; or

(E) an offense in which the person is required to register as a sex offender under the laws of another jurisdiction;

(8) “sexual penetration” has the meaning given in AS 11.81.900;

(9) “unconditional discharge” has the meaning given in AS 12.55.185.

Chapter 64. National Crime Prevention and Privacy Compact.

Sec. 12.64.010. Compact enacted.
The National Crime Prevention and Privacy Compact as contained in this section is enacted into law and entered into on behalf of the State of Alaska with any other states legally joining in it in a form substantially as follows:

The contracting parties agree to the following:

OVERVIEW (a) In general. This Compact organizes an electronic information sharing system among the federal government and the states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment.

(b) Obligations of parties. Under this Compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and to party states for authorized purposes. The FBI shall also manage the federal data facilities that provide a significant part of the infrastructure for the system.

In this Compact, unless the context clearly requires otherwise:
(1) “attorney general” means the attorney general of the United States;

(2) “Compact officer” means
(A) with respect to the federal government, an official so designated by the director of the FBI; and

(B) with respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository;

(3) “council” means the Compact Council established under Article VI;

(4) “criminal history records”
(A) means information collected by criminal justice agencies on individuals consisting of

identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system;

(5) “criminal history record repository” means the state agency designated by the governor or other appropriate executive official or the legislature of a state to perform centralized record keeping functions for criminal history records and services in the state;

(6) “criminal justice” includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders; the administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records;

(7) “criminal justice agency” means
(A) courts;

(B) a governmental agency or any subunit thereof that
(i) performs the administration of criminal justice pursuant to a statute or executive order; and

(ii) allocates a substantial part of its annual budget to the administration of criminal justice; and

(C) federal and state inspectors general offices;

(8) “criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes;

(9) “criterion offense” means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI;

(10) “direct access” means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency;

(11) “executive order” means an order of the President of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law;

(12) “FBI” means the Federal Bureau of Investigation;

(13) “Interstate Identification Index System” or “III System”
(A) means the cooperative federal-state system for the exchange of criminal history records;

(B) includes the National Identification Index, the National Fingerprint File, and to the extent of their participation in such system, the criminal history record repositories of the states and the FBI;

(14) “National Fingerprint File” means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System;

(15) “National Identification Index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System;

(16) “national indices” means the National Identification Index and the National Fingerprint File;

(17) “nonparty state” means a state that has not ratified this Compact;

(18) “noncriminal justice purposes” means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances;

(19) “party state” means a state that has ratified this Compact;

(20) “positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System; identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification;

(21) “sealed record information” means

(A) with respect to adults, that portion of a record that is

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each state determines is a sealed record under its own law and procedure;

(22) “state” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

The purposes of this Compact are to

(1) provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each party state, and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this Compact and with rules, procedures, and standards established by the council under Article VI;

(3) require party states to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the council under Article VI;

(4) provide for the establishment of a council to monitor the III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each party state to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

(a) FBI responsibilities. The director of the FBI shall

(1) appoint an FBI Compact officer who shall

(A) administer this Compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the Department of Justice and the federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from party states when such records are supplied by the FBI directly to other federal agencies;

(2) provide to federal agencies and to state criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including

(A) information from nonparty states; and

(B) information from party states that is available from the FBI through the III System, but is not available from the party state through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) State responsibilities. Each party state shall

(1) appoint a Compact officer who shall

(A) administer this Compact within that state;

(B) ensure that Compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

(C) regulate the in-state use of records received by means of the III System from the FBI or

from other party states;

(2) establish and maintain a criminal history record repository, which shall provide
(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the state's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) Compliance with III System standards. In carrying out their responsibilities under this Compact, the FBI and each party state shall comply with III System rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) Maintenance of record services.
(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

(a) State criminal history record repositories. To the extent authorized by section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”), the FBI shall provide on request criminal history records (excluding sealed records) to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies. The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”), and state criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general, that authorizes national indices checks.

(c) Procedures. Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall
(1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information

whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate “no record” response is communicated to the requesting official.

(a) Positive identification. Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of state requests. Each request for a criminal history record check utilizing the national indices made under any approved state statute shall be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another state criminal history record repository or the FBI.

(c) Submission of federal requests. Each request for criminal history record checks utilizing the national indices made under federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which such request originated. Direct access to the National Identification Index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees. A state criminal history record repository or the FBI

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search.

(1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records

(A) the FBI shall so advise the state criminal history record repository; and

(B) the state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

(a) Establishment.

(1) In general. There is established a council to be known as the “Compact Council,” which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) Organization. The council shall

(A) continue in existence as long as this Compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) Membership. The council shall be composed of 15 members, each of whom shall be appointed by the attorney general, as follows:

(1) nine members, each of whom shall serve a two-year term, who shall be selected from among the Compact officers of party states based on the recommendation of the Compact officers of all party states, except that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states shall be eligible to serve on an interim basis;

(2) two at-large members, nominated by the director of the FBI, each of whom shall serve a three-year term, of whom

(A) one shall be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(B) one shall be a representative of the noncriminal justice agencies of the federal government;

(3) two at-large members, nominated by the chair of the council, once the chair is elected pursuant to Article VI(c), each of whom shall serve a three-year term, of whom

(A) one shall be a representative of state or local criminal justice agencies; and

(B) one shall be a representative of state or local noncriminal justice agencies;

(4) one member, who shall serve a three-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board;

(5) one member, nominated by the director of the FBI, who shall serve a three-year term, and who shall be an employee of the FBI.

(c) Chair and vice chair.

(1) In general. From its membership, the council shall elect a chair and a vice chair of the council, respectively. Both the chair and vice chair of the council

(A) shall be a Compact officer, unless there is no Compact officer on the council who is willing to serve, in which case the chair may be an at-large member; and

(B) shall serve a two-year term and be reelected to only one additional two-year term.

(2) Duties of the vice chair. The vice chair of the council shall serve as the chair of the council in the absence of the chair.

(d) Meetings.

(1) In general. The council shall meet at least once a year at the call of the chair. Each meeting of the council shall be open to the public. The council shall provide prior public notice in the Federal Register of each meeting of the council, including the matters to be addressed at such meeting.

(2) Quorum. A majority of the council or any committee of the council shall constitute a quorum of the council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards. The council shall make available for public inspection and copying at the council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the council.

(f) Assistance from FBI. The council may request from the FBI such reports, studies, statistics, or other information or materials as the council determines to be necessary to enable the council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees. The chair may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

This Compact shall take effect upon being entered into by two or more states as between those states and the federal government. Upon subsequent entering into this Compact by additional states, it shall become effective among those states and the federal government and each party state that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

(a) Relation of Compact to certain FBI activities. Administration of this Compact shall not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures. Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to Public Law 92-544. Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544) or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(a), regarding the use and dissemination of criminal history records and information.

(a) In general. This Compact shall bind each party state until renounced by the party state.

(b) Effect. Any renunciation of this Compact by a party state shall
(1) be effected in the same manner by which the party state ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating state, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any party state, all other portions of this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

(a) In general. The council shall

(1) have initial authority to make determinations with respect to any dispute regarding

(A) interpretation of this Compact;

(B) any rule or standard established by the council pursuant to Article V; and

(C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) Duties of the FBI. The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the council holds a hearing on such matters.

(c) Right of appeal. The FBI or a party state may appeal any decision of the council to the attorney general, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a state court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

Chapter 65. Death Investigations and Medical Examiners.

Article 1. Medical Examiner; Procedures after Death.

Sec. 12.65.005. Duty to notify state medical examiner.

(a) Unless the person has reasonable grounds to believe that notice has already been given, a person who attends a death or has knowledge of a death, in addition to notifying a peace officer, shall immediately notify the state medical examiner when the death appears to have

(1) been caused by unknown or criminal means, during the commission of a crime, or by suicide, accident, or poisoning;

(2) occurred under suspicious or unusual circumstances or occurred suddenly when the decedent was in apparent good health;

(3) been unattended by a practicing physician or occurred less than 24 hours after the deceased

was admitted to a medical facility;

(4) been associated with a diagnostic or therapeutic procedure;

(5) resulted from a disease that constitutes a threat to public health;

(6) been caused by a disease, injury, or toxic agent resulting from employment;

(7) occurred in a jail or corrections facility owned or operated by the state or a political subdivision of the state or in a facility for the placement of persons in the custody or under the supervision of the state;

(8) occurred in a foster home;

(9) occurred in a mental institution or mental health treatment facility;

(10) occurred while the deceased was in the custody of, or was being taken into the custody of, the state or a political subdivision of the state or a public officer or agent of the state or a political subdivision of the state; or

(11) been of a child under 18 years of age or under the legal custody of the Department of Family and Community Services, subject to the jurisdiction of AS 47.10 or AS 47.12, unless the

(A) child's death resulted from a natural disease process and was medically expected; and

(B) the child was under supervised medical care during the 24 hours before the death.

(b) A person who attends a death or has knowledge of a death occurring in circumstances other than those enumerated in (a) of this section may notify the state medical examiners of the death if, in the person's opinion, a death investigation under AS 12.65.020 — 12.65.025 may be appropriate.

(c) The body of a person whose death has been or should be reported to the state medical examiner under this section may not be moved or otherwise disturbed without the permission of the state medical examiner.

Sec. 12.65.007. No duty for peace officer to respond to the scene of an expected home death.

(a) A peace officer is not required by state law to respond to the scene of an expected home death if

(1) the death was expected to occur due to the dead person's state of health before death;

(2) the death occurred at the dead person's home as expected due to the dead person's state of health;

(3) a person authorized to determine and pronounce death determines and pronounces the death; and

(4) a form signed by the dead person's physician concerning the physician's expectation that the death would occur due to the person's state of health and that it would occur at home was, at the time of death, on file with the law enforcement agency for that jurisdiction.

(b) This section does not

(1) prohibit a person from requesting a peace officer to respond to the scene described in (a) of this section if, in the person's opinion, a death investigation by a peace officer may be appropriate due to suspicious or unusual circumstances; or

(2) relieve a person of the duty to notify the medical examiner and a peace officer of a death that is described in AS 12.65.005(a).

Sec. 12.65.010. Appointment of medical examiner. [Repealed, § 18 ch 103 SLA 1996.]

Sec. 12.65.015. State medical examiner and deputies.

(a) The commissioner of health shall appoint a state medical examiner to perform the duties set out in AS 12.65.015 — 12.65.025. The commissioner shall also appoint a deputy medical examiner, and may appoint assistant medical examiners, to perform or assist the state medical examiner in performing these duties. To be eligible for the position of medical examiner, deputy medical examiner, or assistant medical examiner, a person must be a physician licensed to practice in this state or, if the physician is licensed in another jurisdiction, the physician must be employed by the state or by an agency of the United States government within the state. The state medical examiner, deputy medical examiner, and assistant medical examiners are in the exempt service under AS 39.25.110.

(b) The state medical examiner and the deputy medical examiner must be physicians licensed to practice in the state who have education and experience in forensic pathology.

(c) The state medical examiner and deputy medical examiner shall perform the duties assigned to the medical examiner and deputy medical examiner under AS 12.65.020 and regulations implementing that section, and other duties as assigned by the commissioner of health.

(d) The state medical examiner may, through contracts for services, appoint local, regional, and district medical examiners throughout the state to perform or assist in performing the duties assigned to the state medical examiner. To be eligible for appointment as a local, regional, or district medical examiner, a person must be a physician licensed to practice in this state or, if the physician is licensed in another jurisdiction, the physician must be employed by the state or by an agency of the United States government within the state. An appointment under this subsection may be for a term of up to two years.

(e) The state medical examiner shall facilitate the formation of local, regional, or district child fatality review teams to assist local, regional, and district medical examiners in determining the cause and manner of deaths of children under 18 years of age. If a team is formed under this subsection, the team shall have the same access to information, confidentiality requirements, and immunity as provided to the state child fatality review team under AS 12.65.140. A meeting of a team formed under this subsection is closed to the public and not subject to the provisions of AS 44.62.310 — 44.62.319 (Open Meetings Act). A review by a local, regional, or district child fatality review team does not relieve the state child fatality review team under AS 12.65.120 of the responsibility for reviewing a death under AS 12.65.130. A person on a local, regional, or district child fatality review team is not eligible to receive compensation from the state for service on the team, but is eligible for travel expenses and per diem from the Department of Health under AS 39.20.180. A person on a team formed under this subsection serves at the pleasure of the state medical examiner.

Sec. 12.65.020. Medical death investigations.

(a) When a death is reported to the state medical examiner under AS 12.65.005, the state medical examiner or the deputy medical examiner shall perform a medical death investigation. When a person dies under circumstances that, in the opinion of the state medical examiner, warrant an investigation, the state medical examiner or the deputy medical examiner may perform a medical death investigation. In performing the investigation, the state medical examiner or the deputy medical examiner may

(1) order that the body of the person who has died not be moved or otherwise disturbed without the permission of the medical examiner;

(2) request a peace officer to secure the scene and perform an on-scene investigation;

(3) view the remains of the deceased person;

(4) order the remains of the deceased to be transported to another location;

(5) perform a post mortem examination;

(6) perform an autopsy;

(7) take possession of property considered necessary for the investigation;

(8) subpoena and examine a person or record necessary in the opinion of the medical examiner to determine the material facts relating to the death; and

(9) take other actions appropriate under the circumstances to determine the cause and manner of death.

(b) When the state medical examiner or deputy medical examiner has completed an investigation or made the inquiry considered appropriate by the examiner, the examiner shall prepare a report of the examiner's findings and conclusions. If the findings and conclusions indicate that the death may have been caused by criminal means, the state medical examiner or the deputy medical examiner shall submit a copy of the report to the district attorney responsible for prosecutions in the location where the death occurred. The investigative report is a privileged and confidential document, not subject to public disclosure under AS 40.25. It may be disclosed to public officers and employees for a public purpose and, when doing so will not interfere with an ongoing investigation or prosecution, to a person who is related to the deceased or who has a financial or personal interest in the estate of the deceased person.

(c) The state medical examiner, the deputy medical examiner, or a prosecuting attorney may petition the court to hold a death inquest under AS 09.55.062 if the findings and conclusions of the state medical examiner or the deputy medical examiner, in the opinion of the state medical examiner, the deputy medical examiner, or prosecuting attorney, warrant the inquest. Otherwise, the state medical examiner or the deputy medical examiner shall cause a certificate of death for the deceased person to be completed and filed as prescribed by law.

(d) The state medical examiner or the deputy medical examiner may direct the state registrar of vital statistics to amend a death certificate when, in the opinion of the state medical examiner or the deputy medical examiner, the death certificate is incomplete or inaccurate.

(e) The state medical examiner may enter into agreements for services to be performed by persons in the course of medical investigations, and the state medical examiner or the deputy medical examiner may call upon public employees, including a peace officer or a village public safety officer, to perform or assist in performing the duties specified in this section.

(f) The state medical examiner, the deputy medical examiner, and individuals who perform or assist the state medical examiner or the deputy medical examiner in performing the duties of the state medical examiner or the deputy medical examiner under this section are immune from civil liability based on determining the cause and manner of a person's death.

(g) The Department of Health shall adopt regulations to implement this section.

Sec. 12.65.025. Post mortem examinations.
(a) The state medical examiner shall designate the facilities at which post mortem examinations and autopsies ordered under this chapter may be performed consistent with this section. The Department of Health shall pay the costs of
(1) post mortem examinations and autopsies ordered under this chapter;

(2) related transportation to the location where the post mortem examination is conducted and then to the community closest to where the death occurred, except that transportation costs to another requested location shall be paid to the extent that the costs do not exceed the costs that would otherwise have been paid by the department for returning the body to the community closest to where the death occurred;

(3) embalming, if embalming is required by law; and

(4) cosmetology necessary to make the head, face, neck, and hands of the deceased presentable if those parts of the body are disfigured by the post mortem examination.

(b) The Department of Health shall provide clothing and a casket for the deceased if the person legally responsible for the burial, other than the state, is unable to pay for clothing and a casket and the responsible person does not object.

(c) Instead of paying the cost of services listed under (a)(3), (a)(4), and (b) of this section, the Department of Health may pay for the cremation and inurnment of the deceased if
(1) the person legally responsible for the burial requests or approves the cremation and inurnment; and

(2) the cost to the department of the cremation and inurnment does not exceed the cost to the state of services listed under (a)(3), (a)(4), and (b) of this section that the department would otherwise pay for or provide for the deceased.

(d) The Department of Health shall establish the maximum amounts or rates that the department will pay for services under this section. Facilities designated under (a) of this section, as a condition of their designation, shall agree to accept reimbursement from the department as payment in full for services provided by the facility under this section, and may not seek reimbursement for those services from a third party.

(e) The state medical examiner shall designate a location for conducting a post mortem examination that is in the community closest to where the death occurred if
(1) the state medical examiner has verified that a facility with adequate technology, personnel, and training is available at the location to enable the state medical examiner to direct a remote examination;

(2) the facility meets applicable standards, including inspection and accreditation, for

conducting remote post mortem examinations established in the Forensic Autopsy Performance Standards by the National Association of Medical Examiners; and

(3) the cost of conducting the examination in the community closest to where the death occurred is less than the cost of conducting the examination or autopsy at another location, including the cost of transporting the body to and from another location to conduct the examination.

(f) The Department of Health shall provide to a person responsible for the burial of a body written notice describing the duties and procedures of the state medical examiner and the department under this chapter. The notice must explain, in a form and language that is designed to be easy to understand, the availability of

(1) an option to release the body after examination and autopsy to a location other than a mortuary without a recommendation or stated preference to do otherwise;

(2) the department's coverage of costs associated with the examination or autopsy, transportation of the body, and necessary cosmetology as provided under (a) of this section;

(3) clothing and a casket required under (b) of this section;

(4) transportation to the community closest to where the death occurred or to another location;

(5) a burial-transit permit as provided under AS 18.50.250; and

(6) a death certificate as provided under AS 18.50.230.

(g) A person is “unable to pay” under this section if the person

(1) is eligible for assistance under AS 47.25.120 — 47.25.300; or

(2) is otherwise unable to provide clothing and a casket for the deceased.

Secs. 12.65.030 — 12.65.090. Coroners duties and powers. [Repealed, § 18 ch 103 SLA 1996. For current law, see AS 09.55.062 — 09.55.069.]

Sec. 12.65.100. Unclaimed bodies.

When a person dies and no person appears to claim the body for burial, and no provision is made for the body under AS 13.52, the Department of Health, upon notification, shall request a court order authorizing the body to be plainly and decently buried or cremated and the remains decently interred. A judicial officer shall issue the requested order upon the sworn testimony or statement of a representative of the Department of Health that a person has not appeared to claim the body for burial and provision is not made for the body under AS 13.52.

Sec. 12.65.105. Release of property to temporary custodian.

A person having possession of tangible personal property of a decedent may release the property to a temporary custodian willing to take custody of and preserve the property pending the appointment of a personal representative or other transfer under AS 13.16. Upon execution of an affidavit that meets the requirements of court rules adopted to implement this section, the person delivering possession of the property is discharged from further obligation as though the person had dealt with the personal representative of the estate, and the temporary custodian is answerable and accountable for the property to any personal representative of the estate or to another person having a superior right.

Sec. 12.65.110. Inventory and disposition of property.
If a body is unclaimed as described in AS 12.65.100 and money or other property belonging to the deceased is found, the public administrator shall inventory it and take it into possession for disposition under AS 13.16.

Article 2. Child Fatality Review Teams.
Sec. 12.65.120. State child fatality review team.
(a) The state child fatality review team is established in the Department of Health to assist the state medical examiner. The team is composed of

(1) the following persons, or that person's designee:

(A) the state medical examiner;

(B) a state prosecutor with experience in homicide prosecutions, appointed by the attorney general;

(C) an investigator with the state troopers who has experience in conducting investigations of homicide, child abuse, or child neglect, appointed by the commissioner of public safety;

(D) a social worker with the Department of Family and Community Services who has experience in conducting investigations of child abuse and neglect, appointed by the commissioner of family and community services;

(2) the following persons, or that person's designee, appointed by the commissioner of health:

(A) a physician licensed under AS 08.64 who

(i) specializes in neonatology or perinatology; or

(ii) is certified by the American Board of Pediatrics;

(B) a municipal law enforcement officer with experience in conducting investigations of homicide, child abuse, or child neglect;

(C) other persons, including educators, whose experience and expertise would, as determined by the commissioner of health, contribute to the effectiveness of the team.

(b) A team member is not eligible to receive compensation from the state for service on the team. A member appointed under (a)(2) of this section

(1) is eligible for travel expenses and per diem from the Department of Health under AS 39.20.180; and

(2) serves at the pleasure of the commissioner of health.

(c) In addition to the persons specified in (a) of this section, the team may invite a person to participate as a member of the team if the person has expertise that would be helpful to the team in a review of a specific death. A person participating under this subsection is eligible only for travel expenses and per diem from the Department of Health under AS 39.20.180.

(d) The state medical examiner serves as chair of the team.

Sec. 12.65.130. State child fatality review team duties.

(a) The state child fatality review team shall

(1) assist the state medical examiner in determining the cause and manner of the deaths in this state of children under 18 years of age;

(2) unless the child's death is currently being investigated by a law enforcement agency, review a report of a death of a child within 48 hours of the report being received by the medical examiner if

(A) the death is of a child under 10 years of age;

(B) the deceased child, a sibling, or a member of the deceased child's household

(i) is in the legal or physical custody of the state under AS 47 or under similar custody of another state or political subdivision of a state; or

(ii) has been the subject of a report of harm under AS 47.17 or a child abuse or neglect investigation by the Department of Family and Community Services or by a similar child protective service in this or another state;

(C) a protective order issued, filed, or recognized under AS 18.66.100, 18.66.110, or 18.66.140 has been in effect during the previous year in which the petitioner or respondent was a member of the deceased child's immediate family or household; or

(D) the child's death occurred in a mental health institution, mental health treatment facility, foster home, or other residential or child care facility, including a day care facility;

(3) review records concerning

(A) abuse or neglect of the deceased child or another child in the deceased child's household;

(B) the criminal history or juvenile delinquency of a person who may have caused the death of the child and of persons in the deceased child's household; and

(C) a history of domestic violence involving a person who may have caused the death of the child or involving persons in the deceased child's household, including records in the central registry of protective orders under AS 18.65.540;

(4) if insufficient information exists to adequately determine the cause and manner of death, recommend to the state medical examiner that additional information be obtained under AS 12.65.020; and

(5) if a local, regional, or district child fatality review team has not been appointed under AS 12.65.015 or is not available, be available to provide recommendations, suggestions, and advice to state or municipal law enforcement or social service agencies in the investigation of deaths of children.

(b) The state child fatality review team may

(1) collect data and analyze and interpret information regarding deaths of children in this state;

(2) develop state and local data bases on deaths of children in this state;

(3) develop a model protocol for the investigation of deaths of children; and

(4) periodically issue reports to the public containing statistical data and other information that does not violate federal or state law concerning confidentiality of the children and their families

involved in the reviews; these reports may include

(A) identification of trends, patterns, and risk factors in deaths of the children;

(B) analyses of the incidence and causes of deaths of children in this state;

(C) recommendations for improving the coordination of government services and investigations; and

(D) recommendations for prevention of future deaths of children.

Sec. 12.65.140. Records; information; meetings; confidentiality; immunity.

(a) The state child fatality review team and its members shall have access to all information and records to which the state medical examiner has access under this chapter. The state child fatality review team and its members shall maintain the confidentiality of information and records concerning deaths under review, except when disclosures may be necessary to enable the team to carry out its duties under this chapter. However, the team and its members may not disclose a record that is confidential under federal or state law.

(b) Except for public reports issued by the team, records and other information collected by the team or a member of the team related to duties under this chapter are confidential and not subject to public disclosure under AS 40.25.100 — 40.25.295 (Alaska Public Records Act).

(c) Meetings of the state child fatality review team are closed to the public and are not subject to the provisions of AS 44.62.310 — 44.62.319 (Open Meetings Act).

(d) The determinations, conclusions, and recommendations of the state child fatality review team, or its members, are not admissible in a civil or criminal proceeding. Members may not be compelled to disclose their determinations, conclusions, recommendations, discussions, or thought processes through discovery or testimony in any civil or criminal proceeding. Records and information collected by the state child fatality review team are not subject to discovery or subpoena in connection with a civil or criminal proceeding.

(e) Notwithstanding (d) of this section, the state medical examiner may testify in a civil or criminal proceeding even though the death was reviewed by the state child fatality review team under AS 12.65.130 and information received from the review formed a basis of the state medical examiner's testimony.

(f) A person who is a member or an employee of, or who furnishes services to or advises, the state child fatality review team is not liable for damages or other relief in an action brought by reason of the performance of a duty, a function, or an activity of the review team.

Chapter 70. Uniform Criminal Extradition Act.

Sec. 12.70.010. Fugitives from other states and duty of governor.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of another state

a person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

Sec. 12.70.020. Form of demand.
(a) No demand for the extradition of a person accused but not yet convicted of a crime in another state shall be recognized by the governor of this state unless made in writing and containing the following:
(1) an allegation that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter the accused fled the demanding state; except that this allegation may not be required in a proceeding based on AS 12.70.050;

(2) a copy of an indictment found or an information supported by affidavit in the state having jurisdiction of the crime or by a copy of a complaint, affidavit, or other equivalent accusation made before a magistrate there; the indictment, information, or complaint, affidavit, or other equivalent accusation must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand.

(b) No demand for the extradition of a person convicted of a crime in another state shall be recognized by the governor of this state unless made in writing and containing the following:
(1) a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of bail, probation, or parole;

(2) a copy of the judgment of conviction or of a sentence imposed in execution thereof; the copy must be authenticated by the executive authority making the demand.

Sec. 12.70.030. Investigation of demand and report.
When a demand is made upon the governor of this state by the executive authority of another state for a surrender of a person charged with crime, the governor shall investigate the demand.

Sec. 12.70.040. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.
(a) When it is desired to have returned to this state a person charged in this state with a crime, and that person is imprisoned or is held under criminal proceedings then pending against that person in another state, the governor of this state may agree with the executive authority of the other state for the extradition of that person before the conclusion of the proceedings or the term of sentence in the other state, upon condition that the person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

(b) The governor of this state may also surrender on demand of the executive authority of another state a person in this state who is charged in the manner provided in AS 12.70.220 with having violated the laws of the state whose executive authority is making the demand, even though that person left the demanding state involuntarily.

Sec. 12.70.050. Extradition of person not present in demanding state at time of commission of crime.

The governor of this state may also surrender, on demand of the executive authority of another state, a person in this state charged in the other state in the manner provided in AS 12.70.020 with committing an act in this state, or a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall apply to those cases, even though the accused was not in that state at the time of the commission of the crime and has not fled from that state.

Sec. 12.70.060. Issue of governor's warrant of arrest.
If the governor decides that the demand should be complied with, the governor shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to a peace officer or other person whom the governor may think fit to entrust with the execution of the warrant. The warrant must substantially recite the facts necessary to the validity of its issuance.

Sec. 12.70.070. Manner and place of execution of the warrant of arrest.
The warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where the accused may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

Sec. 12.70.080. Authority of arresting officer to command assistance.
Every officer or other person empowered to make the arrest has the same authority in arresting the accused to command assistance therein as peace officers have by law in the execution of a criminal process directed to them, with like penalties against those who refuse their assistance.

Sec. 12.70.090. Rights of accused person and application for writ of habeas corpus.
A person arrested on a warrant may not be delivered over to the agent who the executive authority demanding the person has appointed to receive the person unless the person is first taken immediately before a judge or magistrate of this state, who shall inform the person of the demand made for the person's surrender, and of the crime with which the person is charged, and that the person has the right to demand and procure legal counsel. If the prisoner or the prisoner's counsel states a desire to test the legality of the arrest, the judge or magistrate shall fix a reasonable time to be allowed the prisoner within which to apply for a writ of habeas corpus. When that writ is applied for, notice of the application and of the time and place of hearing on it shall be given to the prosecuting attorney of the judicial district in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

Sec. 12.70.100. Penalty for noncompliance with AS 12.70.090.
An officer or other person who delivers to the agent for extradition of the demanding state a person in custody under the governor's warrant, in wilful disobedience to AS 12.70.090, is guilty of a misdemeanor and, on conviction, is punishable by a fine of not more than $1,000, or by imprisonment for not more than six months, or by both.

Sec. 12.70.110. Confinement in jail when necessary.
(a) The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in a jail in a political subdivision, judicial district, or city of this state through which the officer or person may pass. The keeper of the jail shall receive and safely keep the prisoner until

the officer or person having charge of the prisoner is ready to proceed. The officer or person is chargeable with the expense of keeping.

(b) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in the other state, and who is passing through this state with a prisoner for the purpose of immediately returning that prisoner to the demanding state may, when necessary, confine the prisoner in a jail in a political subdivision, judicial district, or city of this state through which the officer or agent may pass. The keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed. The officer or agent is chargeable with the expense of keeping. The officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that the officer or agent is actually transporting the prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner shall not be entitled to demand a new requisition while in this state.

Sec. 12.70.120. Arrest prior to requisition.
When a person within this state is charged on the oath of a credible person before a judge or magistrate of this state with the commission of a crime in another state and, except in cases arising under AS 12.70.050, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation, or parole; or whenever complaint is made before a judge or magistrate in this state setting out on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused has been charged in that state with the commission of the crime and, except in cases arising under AS 12.70.050, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to a peace officer commanding the officer to apprehend the person named in the warrant, wherever that person may be found in this state, and to bring that person before the same or another judge or magistrate who is available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint or affidavit upon which the warrant is issued shall be attached to the warrant.

Sec. 12.70.130. Arrest without warrant.
The arrest of a person may also be lawfully made by a peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when arrested the accused must be taken before a judge or magistrate without unnecessary delay and, in any event, within 24 hours after arrest, absent compelling circumstances, including Sundays and holidays, and complaint shall be made against the accused under oath setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the accused shall be heard as if the accused had been arrested on a warrant.

Sec. 12.70.140. Commitment to await requisition.
If at the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under AS 12.70.050, that the person has fled from justice, the judge or magistrate shall commit the person to jail for not more than 30 days, as will enable the arrest of the accused to be made under a

warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in AS 12.70.150, or until legally discharged. The commitment by the judge or magistrate shall be by a warrant that shall recite the following:

(1) the accusation against the accused;

(2) the fact that the commitment is for a time as will enable the arrest of the accused to be made under a warrant of the governor of this state; and

(3) that in any event the commitment shall be for not more than 30 days.

Sec. 12.70.150. Bail.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death under the laws of the state in which it was committed, a judge or magistrate in this state shall admit the prisoner to bail by bond or undertaking, with sufficient sureties, and in a sum the judge or magistrate considers proper, conditioned upon the prisoner's appearance before the judge or magistrate at a time specified in the bond or undertaking and for the prisoner's surrender, to be arrested on the warrant of the governor of this state.

Sec. 12.70.160. Extension of time of commitment.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge the accused or may recommit the accused for a further period of not more than 60 days, or a judge or magistrate may again take bail for the appearance and surrender of the accused, as provided in AS 12.70.150, but within a period of not more than 60 days after the date of the new bond or undertaking.

Sec. 12.70.170. Forfeiture of bail.

If the prisoner is admitted to bail and fails to appear and surrender according to the conditions of the bond or undertaking, the judge or magistrate, by proper order, shall declare the bond or undertaking forfeited, and order the immediate arrest of the prisoner if the prisoner is within this state. Recovery may be had on the bond or undertaking in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

Sec. 12.70.180. Persons under criminal prosecution in this state at time of requisition.

If a criminal prosecution has been instituted against the person under the laws of this state and is still pending, the governor has discretion to surrender that person on demand of the executive authority of another state or hold that person until tried and discharged, or convicted and punished in this state.

Sec. 12.70.190. Inquiry into guilt or innocence of accused.

The guilt or innocence of the accused as to the crime of which the accused is charged may not be inquired into by the governor in any proceeding after the demand for extradition, accompanied by a charge of crime in legal form as provided in this chapter, has been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

Sec. 12.70.200. Governor's warrant.

The governor may recall the warrant of arrest or may issue another warrant whenever the governor deems proper.

Sec. 12.70.210. Fugitives from this state.
When the governor of this state demands a person charged with crime or with escaping from confinement or breaking the terms of bail, probation, or parole in this state from the executive authority of any other state, or from a judge of the District Court of the United States for the District of Columbia authorized to receive the demand under the laws of the United States, the governor shall issue a warrant under the seal of this state to an agent, commanding the agent to receive the person so charged if delivered to the agent and convey that person to the proper officer of the judicial district in this state in which the offense was committed.

Sec. 12.70.220. Application for issuance of requisition.
(a) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney of the judicial district in which the offense is committed, or the attorney general, shall present to the governor a written application for a requisition for the return of the person charged. In the application there shall be stated the name of the person so charged, the crime charged, the approximate time, place, and circumstances of its commission, the state in which the accused is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney or the attorney general, the ends of justice require the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of the person's bail, probation, or parole, the prosecuting attorney of the judicial district in which the offense was committed, or the attorney general, the parole or probation authority having jurisdiction over the person, or the commissioner of corrections shall present to the governor a written application for a requisition for the return of that person. In the application there shall be stated the name of the person, the crime for which the person was convicted, the circumstances of the escape from confinement or of the breach of the terms of bail, probation, or parole, and the state in which the person is believed to be, including the location of the person therein at the time the application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The attorney general or the prosecuting attorney, the parole or probation authority, or the commissioner of corrections may also attach further affidavits and other documents in duplicate to be submitted with the application. One copy of the application, with the action of the governor indicated by endorsement on the application, and one of the certified copies of the indictment, complaint, information and affidavits, or judgment or conviction or sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

Sec. 12.70.230. Immunity from service of process in certain civil actions.
A person brought into this state by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding for which the person is being or has been returned, until the person has been

convicted in the criminal proceedings, or, if acquitted, until the person has reasonable opportunity to return to the state from which extradited.

Sec. 12.70.240. Written waiver of extradition proceedings.
(a) A person arrested in this state charged with having committed a crime in another state or alleged to have escaped from confinement, or broken the terms of bail, probation, or parole may waive the issuance and service of the warrant provided for in AS 12.70.060 and 12.70.070 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge or magistrate within this state a writing that states that the person consents to return to the demanding state; however, before the waiver is executed or subscribed by that person, the judge or magistrate shall inform that person of the right to the issuance and service of a warrant of extradition and of the right to apply for a writ of habeas corpus as provided for in AS 12.70.090.

(b) If and when that consent is executed, it shall immediately be forwarded to the office of the governor of this state and filed therein. The judge or magistrate shall direct the officer having the person in custody to deliver immediately that person to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to the agent a copy of the consent.

(c) Nothing in this section is considered to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be considered to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

Sec. 12.70.250. Nonwaiver by this state.
Nothing in this chapter is considered to constitute a waiver by this state of its right, power, or privilege to try the demanded person for crime committed within this state, or of its right, power, or privilege to regain custody of that person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state, nor shall a proceeding had under these sections which results in, or fails to result in, extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

Sec. 12.70.260. No immunity from other criminal prosecutions while in this state.
After a person has been brought back to this state through extradition proceedings, or after waiver of extradition proceedings by that person, that person may be tried in this state for other crimes which the person may be charged with having committed here as well as that specified in the requisition for extradition.

Sec. 12.70.270. Interpretation.
The provisions of this chapter shall be so interpreted and construed as to effectuate the general purposes to make uniform the law of those states that enact it.

Sec. 12.70.280. Definitions.
In this chapter,
(1) “executive authority” includes the governor and a person performing the functions of governor in a state other than this state;

(2) “governor” includes
(A) a person performing the functions of governor by authority of the law of this state; and

(B) the lieutenant governor or the head of a principal department in the executive branch appointed by the governor to act on behalf of the governor in performing extradition duties under this chapter; the appointment shall be in writing and filed with the lieutenant governor;

(3) “state,” referring to a state other than this state, includes another state or possession of the United States.

Sec. 12.70.290. Short title.
This chapter may be cited as the Uniform Criminal Extradition Act.

Chapter 72. Post-Conviction Relief Procedures for Persons Convicted of Criminal Offenses.

Sec. 12.72.010. Scope of post-conviction relief.
A person who has been convicted of, or sentenced for, a crime may institute a proceeding for post-conviction relief if the person claims
(1) that the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state;

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

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

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

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

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

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

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

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

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

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

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

Sec. 12.72.020. Limitations on applications for post-conviction relief.

(a) A claim may not be brought under AS 12.72.010 or the Alaska Rules of Criminal Procedure if

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

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

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

(A) if the claim relates to a conviction, 18 months after the entry of the judgment of the conviction or, if the conviction was appealed, one year after the court's decision is final under the Alaska Rules of Appellate Procedure;

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

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

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

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

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

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

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

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

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

(A) was not known within

(i) 18 months after entry of the judgment of conviction if the claim relates to a conviction;

(ii) 18 months after entry of a court order revoking probation if the claim relates to a court's revocation of probation; or

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

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

(C) is not impeachment evidence; and

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

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

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

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

(d) The court may not consider a substantive claim in an application brought under AS 12.72.010 or the Alaska Rules of Criminal Procedure until the court has first determined that

(1) the application is timely; and

(2) except for an application described in AS 12.72.025 or allowed under (c) of this section, no previous application has been filed.

Sec. 12.72.025. Applications based on claim of ineffective assistance of counsel.

An application may not be brought under AS 12.72.010 or the Alaska Rules of Criminal Procedure if it is based on a claim that the assistance the applicant's attorney provided in a prior application under AS 12.72.010 or the Alaska Rules of Criminal Procedure was ineffective, unless it is filed within one year after the court's decision on the prior application is final under the Alaska Rules of Appellate Procedure.

Sec. 12.72.030. Filing of application for post-conviction relief.

(a) An application for post-conviction relief shall be filed with the clerk at the court location where the underlying criminal case is filed.

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

Sec. 12.72.040. Burden of proof in post-conviction relief proceedings.

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

Chapter 73. Post-Conviction DNA Testing Procedure.

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

(b) An application filed under (a) of this section must specifically identify the evidence sought to be tested and must include facts from which the court can make the findings required under AS 12.73.020. The application must also include
(1) an affidavit by the applicant that attests to the following:
(A) the applicant did not commit the offense for which the applicant was convicted or a lesser included offense;

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

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

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

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

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

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

Sec. 12.73.020. Findings required for post-conviction DNA testing orders.
The court shall order post-conviction DNA testing of specific evidence if
(1) the applicant was convicted of a felony under AS 11.41;

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

(3) the applicant did not admit or concede guilt under oath in an official proceeding for the offense that was the basis of the conviction or a lesser included offense, except that the court, in the interest of justice, may waive this requirement; for the purposes of this paragraph, the entry of

a guilty or nolo contendere plea is not an admission or concession of guilt;

(4) the evidence either
(A) was not subjected to DNA testing; or

(B) was previously subjected to DNA testing, and
(i) the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing; or

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

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

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

(7) the applicant identifies a theory of defense that would establish the applicant's innocence;

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

(9) the proposed DNA testing of the specific evidence may produce new material evidence that would
(A) support the theory of defense described in (7) of this section; and

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

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

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

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

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

Sec. 12.73.040. Timeliness.
In determining whether an application is timely under AS 12.73.020(11), there is a presumption of
(1) timeliness if the application is filed before three years after the date of conviction; this

presumption may be rebutted if the court finds that the application is based solely upon information used in a previously denied application; and

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

Sec. 12.73.050. Testing procedures.

(a) If the court grants the application and DNA samples for comparison purposes are required, samples taken from the applicant or a prisoner must be collected at a law enforcement or correctional facility. If the DNA sample is being collected from a person other than the applicant or a prisoner, the sample must be taken by a law enforcement officer or other authorized person at a location that is convenient for the person from whom the sample is being collected and the person collecting the sample.

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

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

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

Sec. 12.73.060. Post-conviction testing by stipulation.

The provisions of this chapter do not prohibit an applicant and the prosecuting authority from agreeing to conduct post-conviction DNA testing without the person's filing an application under this chapter. The parties may also stipulate to the payment of costs for the DNA testing and other costs associated with the terms of the agreement.

Sec. 12.73.090. Definitions.

In this chapter, unless the context requires otherwise,

(1) “DNA” means deoxyribonucleic acid;

(2) “innocence” means that the applicant was not a perpetrator of or an accomplice to the

offense or lesser included offense for which the applicant was convicted;

(3) “prisoner” has the meaning given in AS 33.30.901;

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

Chapter 75. Habeas Corpus.

Sec. 12.75.010. Persons entitled to prosecute writ.
A person imprisoned or otherwise restrained of liberty under any pretense whatsoever, except in the cases specified in AS 12.75.020, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint, and, if illegal, to be released from custody or to be granted another remedy as law and justice require. Procedure may be as prescribed in the Rules of Civil Procedure.

Sec. 12.75.020. Persons not entitled to prosecute writ.
A person properly imprisoned or restrained by virtue of the legal judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution regularly and lawfully issued upon that judgment or decree shall not be allowed to prosecute the writ.

Sec. 12.75.030. Offense not bailable.
When it appears that the cause or offense for which the person prosecuting the writ is imprisoned or restrained is not bailable, the production of the party may be dispensed with and the writ issued accordingly.

Sec. 12.75.040. Production of body.
The person on whom a writ is served shall bring the body of the person in custody or under restraint, according to the command of the writ, except in the cases provided in AS 12.75.050.

Sec. 12.75.050. Hearing without production of person.
When, from the sickness or infirmity of the person directed to be produced, that person cannot without danger be brought before the court, the person in whose custody or power that person is may state that fact in the return to the writ. If the court is satisfied of the truth of the return and the return is otherwise sufficient, the court shall proceed to decide on the return and to dispose of the matter as if the party had been produced.

Sec. 12.75.060. Proceedings on disobedience of writ.
If the person upon whom the writ is served refuses or neglects to obey it within the time required, and no sufficient excuse is shown, it is the duty of the court before whom the writ is returnable, upon due proof of service, to immediately issue a warrant against that person, directed to a peace officer commanding the officer to immediately apprehend and bring the person before the court. Upon that person being brought before the court, the court shall commit that person to custody until the person makes return to the writ and complies with any order that may be made.

Sec. 12.75.070. Precept to peace officer.
A court that issues a writ without requiring the production of the person or that issues a warrant may also, at any time before final decision, issue a precept to the peace officer to whom the writ or warrant is directed commanding the officer to immediately bring the person for whose benefit the writ was allowed before the court. That person shall remain in the custody of the peace officer until discharged, remanded, or the matter is otherwise disposed of as law and justice require.

Sec. 12.75.080. Discharge of party.
If no legal cause is shown for the imprisonment or restraint, or for its continuation, the court shall discharge the party from the custody or restraint under which the party is held or grant any other appropriate remedy.

Sec. 12.75.090. Remand of party legally detained.
The court shall remand the party if it appears that the party is legally detained in custody.

Sec. 12.75.100. Remedy of person in custody by virtue of civil process.
If it appears on the return of the writ that the prisoner is in custody by virtue of an order or civil process of a court legally constituted, or issued by an officer in the course of judicial proceedings before the officer, authorized by law, the prisoner shall be discharged or granted any other appropriate remedy in any of the following cases:

(1) when the jurisdiction of the court or officer has been exceeded, either as to matter, place, sum, or person;

(2) when, though the original imprisonment was lawful, yet by some act, omission, or event that has taken place afterwards, the party has become entitled to a discharge or other remedy;

(3) when the order or process is defective in some matter of substance required by law, rendering the process void;

(4) when the order or process, though in proper form, has been issued in a case not allowed by law;

(5) when the person having the custody of the prisoner under the order or process is not the person empowered by law to detain the prisoner; or

(6) when the order or process is not authorized by a judgment of a court or by a provision of law.

Sec. 12.75.110. Limitation on scope of court's inquiry.
No court or judge, on the return of a writ of habeas corpus, may inquire into the legality or justice of any order, judgment, or process specified in AS 12.75.020 or into the justice, propriety, or legality of a commitment for a contempt made by a court, officer, or body, according to law, and charged in the commitment, as provided by law.

Sec. 12.75.120. Proceedings where commitment irregular.
If it appears by the testimony offered with the return, or upon the hearing that the party is

probably guilty of a criminal offense, the court, although the commitment is irregular, shall immediately remand the party to the custody of the proper person.

Sec. 12.75.130. Custody of party pending judgment.
Until judgment is given upon the return, the party may either be committed to the custody of a peace officer or placed in the officer's care or under such custody as the party's age or circumstances require.

Sec. 12.75.140. Admission to bail.
A person prosecuting a writ of habeas corpus may, at any time after the writ is allowed, be admitted to bail by the court allowing the writ, or by another judge or magistrate designated by that court or judge, pending the hearing upon the writ and the final order of the court and, in case of appeal, during the pendency of the appeal and until the final order of the appellate court. The bail shall be by written undertaking and executed as bail upon arrest, and the undertaking shall be conditioned that the person so admitted to bail shall appear in the designated court or before the designated judge or magistrate whenever required, and shall at all times be amenable to the order or process of that court, judge, or magistrate, and that if the person fails to perform either of those conditions, the surety or sureties on the undertaking will pay to the state the sum in which that person is so admitted to bail.

Sec. 12.75.150. Effect of admitting to bail.
The admitting to bail of a person prosecuting a writ of habeas corpus does not in any manner affect the writ or other proceedings or the full right of that person to have the cause and legality of the person's imprisonment inquired into and determined both in the trial court and upon appeal.

Sec. 12.75.160. Enforcing judgment of discharge.
Obedience to a judgment for the discharge of a person imprisoned or restrained, pursuant to the provisions of this chapter, may be enforced by the court by proceedings for a contempt. A peace officer or other person is not liable to an action or proceeding for obeying the judgment of discharge.

Sec. 12.75.170. Discharge as bar to subsequent restraint.
No person who has been discharged by the order of a court upon habeas corpus shall again be imprisoned, restrained, or kept in custody for the same cause except in the following cases:

(1) if the party has been discharged from a commitment on a criminal charge and is afterwards committed for the same offense by legal order or process;

(2) if, after a judgment or discharge for a defect of evidence, or for a material defect in the commitment, in a criminal case, the party is again arrested on sufficient evidence and committed by legal process for the same offense;

(3) if, after a civil action, the party has been discharged for any illegality in the judgment, decree, or process specified in AS 12.75.100, and is afterwards imprisoned for the same cause of action;

(4) if, in a civil action, the party has been discharged from commitment on an order of arrest, and is afterwards committed on execution, in the same action, or on order of arrest in another action, after the dismissal of the first action.

Sec. 12.75.180. Grounds for warrant in lieu of writ.
When it appears to a court authorized to issue the writ of habeas corpus that a person is illegally imprisoned or restrained, and that there is good reason to believe that the person will be carried out of the state or suffer some irreparable injury before the person can be relieved by the issuing of a writ of habeas corpus, a court or judge authorized to issue the writ may issue a warrant reciting the facts, and directed to a peace officer commanding the officer to immediately bring the person before the court to be dealt with according to law.

Sec. 12.75.190. Warrant may include command for arrest of defendant.
When the proof mentioned in AS 12.75.180 is also sufficient to justify the arrest of the person having the party in custody, as for a criminal offense, committed in the taking or detaining of the party, the warrant may also contain an order for the arrest of the person for that offense.

Sec. 12.75.200. Warrant in lieu of writ.
The peace officer to whom the warrant is directed shall execute it by bringing the party named and the person who detains the party, if so commanded by the warrant, before the judge issuing the warrant. The person detaining the party shall make a return to the warrant as in the case of a writ of habeas corpus, and a proceeding shall be had as if a writ of habeas corpus had been issued in the first instance.

Sec. 12.75.210. Proceedings as to person having party in custody.
If the person having the party in custody is brought before the court as for a criminal offense, the person shall be examined, committed, bailed, or discharged by the court in like manner as in other criminal cases of the same nature.

Sec. 12.75.220. Penalty for refusing to deliver copy of or obey authority to detain party.
If a peace officer or other person refuses to deliver a copy of an order, warrant, process, or other authority by which the officer or other person detains a person to anyone who demands a copy and tenders the fees therefor, the officer or other person shall forfeit and pay to the person detained a sum of not more than $200.

Sec. 12.75.230. Appeal.
A party to a proceeding by habeas corpus may appeal from the judgment of the court refusing to allow the writ or a final judgment therein in like manner and with like effect as in an action. No question once finally determined upon a proceeding by habeas corpus shall be re-examined upon another or subsequent proceeding of the same kind.

Chapter 80. Miscellaneous Provisions.

Sec. 12.80.010. Contempt.
The provisions of the Code of Civil Procedure relating to contempt (AS 09.50.010 — 09.50.060) shall apply in criminal actions.

Sec. 12.80.020. Indictment, information, and complaint.
No person shall be held to answer for an infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information or complaint in the manner and form set out in the Rules of Criminal Procedure.

Sec. 12.80.030. Taxation of costs.
Costs may not be taxed to the defendant in a criminal action or proceeding begun or prosecuted in any of the courts of the state unless otherwise ordered by supreme court rule.

Sec. 12.80.040. Violations and infractions.
Except as provided in AS 11.81.900(b) and AS 28.90.010(d), all laws of the state relating to misdemeanors apply to violations and infractions, including the powers of peace officers, the jurisdiction of courts, and the periods for commencing actions and for bringing a case to trial.

Sec. 12.80.050. [Renumbered as AS 12.45.086.]
Sec. 12.80.060. Fingerprinting.
(a) When a person is arrested for an offense, with or without a warrant, fingerprints of the person may be taken by the law enforcement agency with custody of the person. If the law enforcement agency with custody of the person does not take the fingerprints, the person's fingerprints shall be taken by the correctional facility where the person is lodged following the arrest.

(b) At the initial court appearance or arraignment of a person for an offense, the court shall determine if the person's fingerprints have been taken in connection with the offense. If the court is unable to conclusively determine that the person's fingerprints have been taken, the court shall order the person to submit to fingerprinting within 24 hours at the appropriate correctional facility or another place for taking fingerprints that is more appropriate.

(c) When a defendant is sentenced or otherwise adjudicated for an offense, the court shall determine if legible fingerprints have been taken in connection with the proceedings. If the court is unable to conclusively determine that legible fingerprints have been taken, the court shall order that the defendant, as a condition of sentence, adjudication, suspended imposition of sentence, probation, or release, submit to fingerprinting within 24 hours at the appropriate correctional facility or another place for taking fingerprints that is more appropriate.

(d) The Department of Public Safety shall develop standard forms and procedures for the taking of fingerprints under this section. Fingerprints shall be
(1) taken on a form, and in the manner, prescribed by the Department of Public Safety; and

(2) forwarded within five working days to the Department of Public Safety.

(e) When the Department of Public Safety receives fingerprints of a person in connection with an offense, the Department of Public Safety shall make a reasonable effort to confirm the identity of the person fingerprinted. If the Department of Public Safety finds that the person fingerprinted has criminal history record information under a name other than the name submitted with the fingerprints, the Department of Public Safety shall promptly notify the officer, agency, or facility that took the fingerprints.

(f) If the arresting officer, the law enforcement agency that employs the officer, or the correctional facility where fingerprints were taken is notified by the Department of Public Safety that fingerprints taken under this section are not legible, the officer, agency, or facility shall make

a reasonable effort to obtain a legible set of fingerprints. If legible fingerprints cannot be obtained within a reasonable period of time, and if the illegible fingerprints were taken under a court order, the officer or agency shall inform the court, which shall order the defendant to submit to fingerprinting again.

(g) In this section,

(1) "correctional facility" has the meaning given in AS 33.30.901;

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, the Military Code of Alaska, or a municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under AS 11.56.730; or

(D) under AS 12.70.

Chapter 85. General Provisions.

Sec. 12.85.010. Applicability of title and supreme court rules.

The provisions of this title apply to all criminal actions and proceedings in all courts except where specific provision is otherwise made or where the Rules of Criminal Procedure adopted by the supreme court under its constitutional authority apply. This title governs all proceedings in actions brought after January 1, 1963, and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules take effect would not be feasible, or would work injustice, in which event, the laws in effect before January 1, 1963, apply.

Sec. 12.85.020. Short title.

This title may be cited as the Code of Criminal Procedure.