



# LAWS OF ALASKA

2008

**Source**

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**Chapter No.**

75

**AN ACT**

Relating to the term of probation for persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol; relating to termination of probation for certain persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol; relating to furnishing or delivering alcoholic beverages to persons under 21 years of age; relating to shipping, sending, transporting, or bringing alcohol to a local option area and providing alcohol to others in the local option area, including penalties for violations; relating to reports of alcohol violations by minors; relating to the payment of permanent fund dividends to certain individuals required to register as sex offenders or child kidnappers; relating to public notice requirements relating to amounts that would have been paid as dividends to certain individuals required to register as sex offenders or child kidnappers; relating to certain persons who lend money on secondhand articles; relating to arson and criminally negligent burning; relating to defenses for the detention of persons suspected of committing concealment of merchandise or theft; relating to the determination of time of a conviction; relating to issuance of search warrants; relating to persons found incompetent to stand trial concerning criminal conduct; relating to probation for certain offenses; relating to restitution for fish and game violations; relating to aggravating factors at sentencing; relating to post-conviction relief proceedings; relating to criminal extradition authority of the governor; removing the statutory bar to prosecution of certain crimes; relating to the reporting of suspected child pornography by certain persons; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants, and Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1



## **AN ACT**

1 Relating to the term of probation for persons convicted of minor consuming or in possession  
2 or control of alcohol or repeat minor consuming or in possession or control of alcohol;  
3 relating to termination of probation for certain persons convicted of minor consuming or in  
4 possession or control of alcohol or repeat minor consuming or in possession or control of  
5 alcohol; relating to furnishing or delivering alcoholic beverages to persons under 21 years of  
6 age; relating to shipping, sending, transporting, or bringing alcohol to a local option area and  
7 providing alcohol to others in the local option area, including penalties for violations; relating  
8 to reports of alcohol violations by minors; relating to the payment of permanent fund  
9 dividends to certain individuals required to register as sex offenders or child kidnappers;  
10 relating to public notice requirements relating to amounts that would have been paid as  
11 dividends to certain individuals required to register as sex offenders or child kidnappers;

1 relating to certain persons who lend money on secondhand articles; relating to arson and  
2 criminally negligent burning; relating to defenses for the detention of persons suspected of  
3 committing concealment of merchandise or theft; relating to the determination of time of a  
4 conviction; relating to issuance of search warrants; relating to persons found incompetent to  
5 stand trial concerning criminal conduct; relating to probation for certain offenses; relating to  
6 restitution for fish and game violations; relating to aggravating factors at sentencing; relating  
7 to post-conviction relief proceedings; relating to criminal extradition authority of the  
8 governor; removing the statutory bar to prosecution of certain crimes; relating to the reporting  
9 of suspected child pornography by certain persons; amending Rule 37(b), Alaska Rules of  
10 Criminal Procedure, relating to execution of warrants, and Rule 35.1, Alaska Rules of  
11 Criminal Procedure; and providing for an effective date.

12 \_\_\_\_\_  
13 \* **Section 1.** AS 04.16.050(b) is amended to read:

14 (b) A person who violates (a) of this section and who has not been previously  
15 convicted or received a suspended imposition of sentence under (1) of this subsection  
16 is guilty of minor consuming or in possession or control. Upon conviction in the  
17 district court, the court

18 (1) may grant a suspended imposition of sentence under AS 12.55.085  
19 and place the person on probation for **up to** one year [OR UNTIL THE PERSON IS  
20 21 YEARS OF AGE, WHICHEVER IS LATER,] if the person has not been convicted  
21 of a violation of this section previously; among the conditions of probation, the court  
22 shall, with the consent of a community diversion panel, refer the person to the panel,  
23 and require the person to comply with conditions set by the panel, including  
24 counseling, education, treatment, community work, and payment of fees; in this  
25 paragraph, "community diversion panel" means a youth court or other group selected  
26 by the court to serve as a sentencing option for a person convicted under this section;  
27 or

1 (2) shall impose a fine of at least \$200 but not more than \$600, shall  
2 require the person to attend alcohol information school if the school is available, and  
3 shall place the person on probation **for up to one year** under (e) of this section; the  
4 court may suspend a portion of the fine imposed under this paragraph that exceeds  
5 \$200 if the person is required to pay for education or treatment required under (e) of  
6 this section.

7 \* **Sec. 2.** AS 04.16.050(c) is amended to read:

8 (c) A person is guilty of repeat minor consuming or in possession or control if  
9 the person was placed on probation under **(b)(1)** [(b)] of this section or has been  
10 previously convicted **once**, and the person violates (a) of this section. Upon conviction  
11 in the district court, the court shall

12 (1) impose a fine of \$1,000 and require at least 48 hours of community  
13 work;

14 (2) revoke the person's driver's license for three months;

15 (3) take possession of the person's driver's license; and

16 (4) suspend up to \$500 of the fine and place the person on probation  
17 **for up to one year** under (e) of this section.

18 \* **Sec. 3.** AS 04.16.050(d) is amended to read:

19 (d) A person is guilty of habitual minor consuming or in possession or control  
20 if the person was placed on probation under (c) of this section, or has been previously  
21 convicted twice, and the person violates (a) of this section. Habitual minor consuming  
22 or in possession or control is a class B misdemeanor. Upon conviction, the court may  
23 impose an appropriate period of imprisonment and fine and place the person on  
24 probation under (e) of this section **for one year, or until the person is 21 years of**  
25 **age, whichever is later**, and shall

26 (1) impose at least 96 hours of community work;

27 (2) revoke the person's driver's license for six months;

28 (3) within five working days, notify the agency responsible for the  
29 administration of motor vehicle laws of the revocation; and

30 (4) take possession of the person's driver's license.

31 \* **Sec. 4.** AS 04.16.050(e) is amended to read:

1 (e) The court shall place a person sentenced under **(b)(2)** [(b)], (c), or (d) of  
2 this section on probation for **the appropriate period** [ONE YEAR, OR UNTIL THE  
3 PERSON IS 21 YEARS OF AGE, WHICHEVER IS LATER]. The person may not  
4 refuse probation. The court may require the person to pay for and enroll in a juvenile  
5 alcohol safety action program, if one is available. The court shall impose the following  
6 conditions of probation:

7 (1) the person shall pay for and successfully complete any education or  
8 treatment recommended;

9 (2) the person may not consume inhalants or possess or consume  
10 controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

11 (3) the person shall timely complete any community work ordered, as  
12 provided in (f) of this section; and

13 (4) other conditions the court considers appropriate.

14 \* **Sec. 5.** AS 04.16.050 is amended by adding a new subsection to read:

15 (l) Notwithstanding (b), (c), and (e) of this section, a person sentenced under  
16 (b) or (c) of this section may make a motion to the court to terminate probation of that  
17 person before the end of the probationary period required under those subsections.  
18 The court may grant the motion if the court finds, by clear and convincing evidence,  
19 that

20 (1) the person completed any community work ordered under (f) of  
21 this section;

22 (2) the person has successfully completed any education or treatment  
23 program ordered by the court and, if required by the court, has either

24 (A) paid for the programs; or

25 (B) made a good faith effort to pay for the programs, agreed to  
26 have the debt reduced to a civil judgment, entered into a repayment plan with  
27 the provider or the state, and agreed that the civil judgment may be enforced in  
28 the manner provided for restitution and fines in AS 12.55.051;

29 (3) the person has either

30 (A) paid the fine; or

31 (B) made a good faith effort to pay the fine, agreed to have the

1 remaining fine amount reduced to a civil judgment, entered into a plan with the  
2 state, and agreed that the civil judgment may be enforced in the manner  
3 provided for restitution and fines in AS 12.55.051; and

4 (4) the person has substantially complied with the other conditions of  
5 probation.

6 \* **Sec. 6.** AS 04.16.051(a) is amended to read:

7 (a) A person may not furnish or deliver an alcoholic beverage to a person  
8 under the age of 21 years. **This subsection does not apply to a licensee or an agent**  
9 **or employee of a licensee while working on licensed premises.**

10 \* **Sec. 7.** AS 04.16.052 is amended to read:

11 **Sec. 04.16.052. Furnishing of alcoholic beverages to persons under the age**  
12 **of 21 by licensees.** A licensee or an agent or employee of the licensee may not with  
13 criminal negligence

14 (1) allow another person to sell, barter, or give an alcoholic beverage  
15 to a person under the age of 21 years within licensed premises;

16 (2) allow a person under the age of 21 years to enter and remain within  
17 licensed premises except as provided in AS 04.16.049;

18 (3) allow a person under the age of 21 years to consume an alcoholic  
19 beverage within licensed premises;

20 (4) allow a person under the age of 21 years to sell or serve alcoholic  
21 beverages;

22 **(5) while working on licensed premises, furnish or deliver alcoholic**  
23 **beverages to a person under the age of 21 years.**

24 \* **Sec. 8.** AS 04.16.200(e) is amended to read:

25 (e) A person who sends, transports, or brings alcoholic beverages into a  
26 municipality or established village in violation of AS 04.11.499(a) is, upon conviction,

27 (1) **except as provided in (3) of this subsection,** guilty of a class A  
28 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters  
29 of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

30 (2) guilty of a class C felony if the quantity of alcoholic beverages is  
31 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12

1 gallons or more of malt beverages; or

2 (3) guilty of a class C felony if the quantity of alcoholic beverages  
3 is less than 10 and one-half liters of distilled spirits, 24 liters of wine, or 12 gallons  
4 of malt beverages and the person has been previously convicted under this  
5 subsection or (b) of this section two or more times within 15 years of the date of  
6 the present offense.

7 \* **Sec. 9.** AS 04.16.200 is amended by adding new subsections to read:

8 (g) Upon conviction of a class A misdemeanor under (e)(1) of this section, the  
9 court

10 (1) shall impose a minimum sentence of imprisonment of

11 (A) not less than 72 consecutive hours and a fine of not less  
12 than \$1,500 if the person has not been previously convicted;

13 (B) not less than 20 days and a fine of not less than \$3,000 if  
14 the person has been previously convicted once;

15 (C) not less than 60 days and a fine of not less than \$4,000 if  
16 the person has been previously convicted twice and is not subject to  
17 punishment under (h) of this section;

18 (D) not less than 120 days and a fine of not less than \$5,000 if  
19 the person has been previously convicted three times and is not subject to  
20 punishment under (h) of this section;

21 (E) not less than 240 days and a fine of not less than \$6,000 if  
22 the person has been previously convicted four times and is not subject to  
23 punishment under (h) of this section;

24 (F) not less than 360 days and a fine of not less than \$7,000 if  
25 the person has been previously convicted more than four times and is not  
26 subject to punishment under (h) of this section;

27 (2) may not

28 (A) suspend execution of sentence or grant probation except on  
29 the condition that the person

30 (i) serve the minimum imprisonment under (1) of this  
31 subsection; and

1 (ii) pay the minimum fine required under (1) of this  
2 subsection; or  
3 (B) suspend imposition of sentence.  
4 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this  
5 section, the court  
6 (1) shall impose a fine of not less than \$10,000 and a minimum  
7 sentence of imprisonment of  
8 (A) 120 days if the person has been previously convicted once;  
9 (B) 240 days if the person has been previously convicted two  
10 times;  
11 (C) 360 days if the person has been previously convicted three  
12 or more times;  
13 (2) may not  
14 (A) suspend execution of sentence or grant probation except on  
15 the condition that the person  
16 (i) serve the minimum imprisonment under (1) of this  
17 subsection; and  
18 (ii) pay the minimum fine required under (1) of this  
19 subsection; or  
20 (B) suspend imposition of sentence.  
21 (i) In (g) of this section, "previously convicted" means having been convicted,  
22 within the 15 years preceding the date of the present offense, of an offense under (b)  
23 or (e) of this section or a law or ordinance of another jurisdiction having elements  
24 similar to those offenses.  
25 (j) In (h) of this section, "previously convicted" means having been convicted,  
26 within the 15 years preceding the date of the present offense, of a felony offense under  
27 (b) or (e) of this section or a law or ordinance of another jurisdiction having elements  
28 similar to those felony offenses.  
29 (k) The court shall consider the date of a previous conviction as occurring on  
30 the date that sentence is imposed for the prior offense.

31 \* **Sec. 10.** AS 08.76.010 is amended by adding a new subsection to read:

1 (b) A person who lends money on secondhand articles under (a) of this section  
2 and is located in a municipality that has a population of over 5,000 shall also maintain  
3 an electronic record that provides the information required by (a)(1) and (4) of this  
4 section for the secondhand articles on which the person lends money. The person shall  
5 submit the electronic record as required by the municipal law enforcement agency.

6 \* **Sec. 11.** AS 08.76.020 is amended to read:

7 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and the  
8 electronic record required by AS 08.76.010 shall appear in chronological order and,  
9 when made in a book, in ink or indelible pencil. Blank lines may not be left between  
10 entries. Obliterations, alterations, or erasures may not be made. Corrections shall be  
11 made by drawing a line [IN INK] through the entry without destroying its legibility,  
12 and, when made in a book, the line shall be drawn in ink. The book shall be open  
13 to the inspection of a peace officer at reasonable times.

14 \* **Sec. 12.** AS 11.46.230(a) is amended to read:

15 (a) In a civil or criminal action upon the complaint of a person who has been  
16 detained in or in the immediate vicinity of a commercial establishment for the purpose  
17 of investigation or questioning as to the ownership of merchandise, it is a defense that

18 (1) the person was detained in a reasonable manner and for not more  
19 than a reasonable time to permit investigation or questioning by a peace officer or by  
20 the owner of the commercial establishment or the owner's agent; and

21 (2) the peace officer, owner, or owner's agent had probable cause to  
22 believe that the person detained was committing or attempting to commit concealment  
23 of merchandise or theft from the commercial establishment.

24 \* **Sec. 13.** AS 11.46.295 is amended to read:

25 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior  
26 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or  
27 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under  
28 AS 11.46.220(c), a conviction for an offense under another law or ordinance with  
29 similar elements is a conviction of an offense having elements similar to those of an  
30 offense defined as such under Alaska law at the time the offense was committed. The  
31 court shall consider the date of a prior conviction as occurring on the date that

1 sentence is imposed for the prior offense.

2 \* **Sec. 14.** AS 11.46.410(a) is amended to read:

3 (a) A person commits the crime of arson in the second degree if the person  
4 knowingly [INTENTIONALLY] damages a building by starting a fire or causing an  
5 explosion.

6 \* **Sec. 15.** AS 11.46 is amended by adding a new section to read:

7 **Sec. 11.46.427. Criminally negligent burning in the first degree.** (a) A  
8 person commits the crime of criminally negligent burning in the first degree if the  
9 person

10 (1) violates AS 11.46.430; and

11 (2) within the preceding 10 years, has been convicted on two separate  
12 occasions of violating AS 11.46.400 - 11.46.430 or AS 41.15.150 or a law or  
13 ordinance of this or another jurisdiction with elements similar to those offenses.

14 (b) Criminally negligent burning in the first degree is a class C felony.

15 \* **Sec. 16.** AS 11.46.430 is amended to read:

16 **Sec. 11.46.430. Criminally negligent burning in the second degree.** (a) A  
17 person commits the crime of criminally negligent burning in the second degree if  
18 with criminal negligence the person damages property of another by fire or explosion.

19 (b) Criminally negligent burning in the second degree is a class A  
20 misdemeanor.

21 \* **Sec. 17.** AS 12.35.010(a) is amended to read:

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

26 \* **Sec. 18.** AS 12.35.015(a) is amended to read:

27 (a) A judicial officer may issue a search warrant upon the sworn oral  
28 testimony of a person communicated by telephone or other appropriate means, or  
29 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER  
30 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

31 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT OR

1 TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD  
2 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH  
3 WARRANT; AND

4 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION  
5 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH AN  
6 ONGOING INVESTIGATION].

7 \* **Sec. 19.** AS 12.47.110(a) is amended to read:

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

18 \* **Sec. 20.** AS 12.47.110(b) is amended to read:

19 (b) On or before the expiration of the initial 90-day period of commitment, the  
20 court shall conduct a hearing to determine whether or not the defendant remains  
21 incompetent. If the court finds by a preponderance of the evidence that the defendant  
22 remains incompetent, the court may recommit the defendant for a second period of 90  
23 days. The court shall determine at the expiration of the second 90-day period whether  
24 the defendant has become competent. If, at the expiration of the second 90-day period,  
25 the court determines that the defendant continues to be incompetent to stand trial, the  
26 charges against the defendant shall be dismissed without prejudice, and continued  
27 commitment of the defendant shall be governed by the provisions relating to civil  
28 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a  
29 crime involving force against a person and the court finds that the defendant presents a  
30 substantial danger of physical injury to other persons and that there is a substantial  
31 probability that the defendant will regain competency within a reasonable period of

1 time, in which case the court may extend the period of commitment for an additional  
2 six months. If the defendant remains incompetent at the expiration of the additional  
3 six-month period, the charges shall be dismissed without prejudice, and **continued**  
4 **[EITHER CIVIL] commitment proceedings shall be governed by the provisions**  
5 **relating to civil commitment under AS 47.30.700 - 47.30.915** [INSTITUTED OR  
6 THE COURT SHALL ORDER THE RELEASE OF THE DEFENDANT]. If the  
7 defendant remains incompetent for five years after the charges have been dismissed  
8 under this subsection, the defendant may not be charged again for an offense arising  
9 out of the facts alleged in the original charges, except if the original charge is a class A  
10 felony or unclassified felony.

11 \* **Sec. 21.** AS 12.47.110 is amended by adding a new subsection to read:

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

17 \* **Sec. 22.** AS 12.55.090(a) is amended to read:

18 (a) Probation may be granted whether the **offense under AS 11 or AS 16 or**  
19 **the** crime is punishable by fine or imprisonment or both. If **an offense under AS 11**  
20 **or AS 16 or** a crime is punishable by both fine and imprisonment, the court may  
21 impose a fine and place the defendant on probation as to imprisonment. Probation may  
22 be limited to one or more counts or indictments, but, in the absence of express  
23 limitation, shall extend to the entire sentence and judgment.

24 \* **Sec. 23.** AS 12.55.155(c)(8) is amended to read:

25 (8) the defendant's prior criminal history includes conduct involving  
26 aggravated **assaultive behavior** or repeated instances of assaultive behavior; **in this**  
27 **paragraph, "aggravated assaultive behavior" means assault that is a felony**  
28 **under AS 11.41, or a similar provision in another jurisdiction;**

29 \* **Sec. 24.** AS 12.55.155(f) is amended to read:

30 (f) If the state seeks to establish a factor in aggravation at sentencing

31 (1) under (c)(7), (8), (12), (15), **(18)(B)**, (19), (20), (21), or (31) of this

1 section, or if the defendant seeks to establish a factor in mitigation at sentencing,  
2 written notice must be served on the opposing party and filed with the court not later  
3 than 10 days before the date set for imposition of sentence; the factors in aggravation  
4 listed in this paragraph and factors in mitigation must be established by clear and  
5 convincing evidence before the court sitting without a jury; all findings must be set out  
6 with specificity;

7 (2) other than one listed in (1) of this subsection, the factor shall be  
8 presented to a trial jury under procedures set by the court, unless the defendant waives  
9 trial by jury, stipulates to the existence of the factor, or consents to have the factor  
10 proven under procedures set out in (1) of this subsection; a factor in aggravation  
11 presented to a jury is established if proved beyond a reasonable doubt; written notice  
12 of the intent to establish a factor in aggravation must be served on the defendant and  
13 filed with the court

14 (A) 20 days before trial, or at another time specified by the  
15 court;

16 (B) within 48 hours, or at a time specified by the court, if the  
17 court instructs the jury about the option to return a verdict for a lesser included  
18 offense; or

19 (C) five days before entering a plea that results in a finding of  
20 guilt, or at another time specified by the court.

21 \* **Sec. 25.** AS 12.70.280(2) is amended to read:

22 (2) "governor" includes

23 (A) a person performing the functions of governor by authority  
24 of the law of this state; and

25 (B) the lieutenant governor or the head of a principal  
26 department in the executive branch appointed by the governor to act on  
27 behalf of the governor in performing extradition duties under this  
28 chapter; the appointment shall be in writing and filed with the lieutenant  
29 governor;

30 \* **Sec. 26.** AS 12.72.020(a) is amended to read:

31 (a) A claim may not be brought under AS 12.72.010 or the Alaska Rules of

1 Criminal Procedure if

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

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

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

8 (A) if the claim relates to a conviction, **18 months** [TWO  
9 YEARS] after the entry of the judgment of the conviction or, if the conviction  
10 was appealed, one year after the court's decision is final under the Alaska  
11 Rules of Appellate Procedure;

12 (B) if the claim relates to a court revocation of probation, **18**  
13 **months** [TWO YEARS] after the entry of the court order revoking probation  
14 or, if the order revoking probation was appealed, one year after the court's  
15 decision is final under the Alaska Rules of Appellate Procedure;

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

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

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

23 \* **Sec. 27.** AS 12.72.020(b) is amended to read:

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

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

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

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

31 (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** [TWO YEARS] after entry of the judgment of conviction if the claim relates to a conviction;

(ii) **18 months** [TWO YEARS] after entry of a court order revoking probation if the claim relates to a court's revocation of probation; or

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

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

(C) is not impeachment evidence; and

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

\* **Sec. 28.** AS 12.72.020 is amended by adding a new subsection to read:

(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. 29.** AS 16.05.925(b) is amended to read:

(b) In addition to a penalty imposed under (a) of this section **or any other penalty for violation of this title or a regulation adopted under this title**, a person who is convicted of unlawfully taking an animal listed in this subsection may be ordered by the court to pay restitution to the state in the amount set out in this subsection for each animal unlawfully taken:

(1) Bear, black ..... \$ 600

(2) Bear, brown or grizzly ..... 1,300

(3) Bison ..... 1,300

1	(4) Caribou .....	850
2	(5) Deer .....	400
3	(6) Elk .....	800
4	(7) Goat .....	800
5	(8) Moose .....	1,000
6	(9) Musk oxen .....	3,000
7	(10) Sheep .....	1,100
8	(11) Wolf .....	500
9	(12) Wolverine .....	500.

10 \* **Sec. 30.** AS 28.15.191(a) is amended to read:

11 (a) A court that convicts a person of an offense under this title or a regulation  
12 adopted under this title, or another law or regulation of this state [,] or a municipal  
13 ordinance that regulates the driving of vehicles, **or a violation of AS 04.16.050** shall  
14 forward a record of the conviction to the department within five working days. A  
15 conviction of a standing or parking offense need not be reported.

16 \* **Sec. 31.** AS 28.35.028(a) is amended to read:

17 (a) Notwithstanding another provision of law, with the consent of the state and  
18 the defendant, the court may elect to proceed in a criminal case under **AS 04.16.200(b)**  
19 **or (e)**, AS 28.35.030, or 28.35.032, including the case of a defendant charged with  
20 violating the terms of probation, under the procedure provided in this section and  
21 order the defendant to complete a court-ordered treatment program. The state may not  
22 consent to a referral under this subsection unless the state has consulted with the  
23 victim and explained the process and consequences of the referral to the victim. A  
24 court may not elect to proceed under this section if the defendant has previously  
25 participated in a court-ordered treatment program under this section two or more  
26 times.

27 \* **Sec. 32.** AS 43.23 is amended by adding a new section to read:

28 **Sec. 43.23.021. Delayed payment of certain dividends.** (a) Notwithstanding  
29 other provisions regarding the payment of permanent fund dividends, if an individual  
30 is required to register as a sex offender or child kidnapper under AS 12.63 and has not  
31 registered or has not completed the required periodic verifications or notices required

1 under AS 12.63, payment of the dividend for that individual shall be delayed.

2 (b) If payment of a dividend is delayed, the department shall notify the  
3 individual in writing of the delayed payment status, explain the requirements of this  
4 section, and request proof of registration and compliance with the verifications and  
5 notices required under AS 12.63. The dividend may not be paid unless, within one  
6 year after the notification, the department determines that the individual has registered  
7 and is in compliance with the verifications and notices required under AS 12.63.

8 (c) The permanent fund dividend of an individual for whom payment has been  
9 delayed, but that remains payable under (b) of this section, is subject to levy,  
10 execution, garnishment, attachment, or any other remedy for the collection of debt.  
11 The department shall immediately pay that dividend, or the portion of it that has been  
12 claimed by a debtor, as provided in AS 43.23.065 - 43.23.068.

13 (d) If an individual for whom payment of a permanent fund dividend has been  
14 delayed but remains payable under (b) of this section dies before the dividend is paid  
15 or payable, the department shall pay the dividend to a personal representative of the  
16 individual's estate.

17 (e) The department shall include notice with the dividend application form of  
18 the requirements of (a) and (b) of this section.

19 \* **Sec. 33.** AS 43.23.025(a) is amended to read:

20 (a) By October 1 of each year, the commissioner shall determine the value of  
21 each permanent fund dividend for that year by

22 (1) determining the total amount available for dividend payments,  
23 which equals

24 (A) the amount of income of the Alaska permanent fund  
25 transferred to the dividend fund under AS 37.13.145(b) during the current year;

26 (B) plus the unexpended and unobligated balances of prior  
27 fiscal year appropriations that lapse into the dividend fund under  
28 AS 43.23.045(d);

29 (C) less the amount necessary to pay prior year dividends from  
30 the dividend fund in the current year under AS 43.23.005(h), **43.23.021**, and  
31 **43.23.055(3) and (7)** [UNDER AS 43.23.055(3) AND (7)];

1 (D) less the amount necessary to pay dividends from the  
2 dividend fund due to eligible applicants who, as determined by the department,  
3 filed for a previous year's dividend by the filing deadline but who were not  
4 included in a previous year's dividend computation;

5 (E) less appropriations from the dividend fund during the  
6 current year, including amounts to pay costs of administering the dividend  
7 program and the hold harmless provisions of AS 43.23.075;

8 (2) determining the number of individuals eligible to receive a  
9 dividend payment for the current year and the number of estates and successors  
10 eligible to receive a dividend payment for the current year under AS 43.23.005(h); and

11 (3) dividing the amount determined under (1) of this subsection by the  
12 amount determined under (2) of this subsection.

13 \* **Sec. 34.** AS 43.23.028(b) is amended to read:

14 (b) To the extent that amounts appropriated for a fiscal year do not exceed the  
15 total amount that would have been paid during the previous fiscal year to individuals  
16 who were ineligible to receive dividends under AS 43.23.005(d) **or under**  
17 **AS 43.23.021(b)** if they had been eligible, the notice requirements of (a)(3) of this  
18 section do not apply to appropriations from the dividend fund to

19 (1) the crime victim compensation fund established under  
20 AS 18.67.162 for payments to crime victims;

21 (2) the council on domestic violence and sexual assault established  
22 under AS 18.66.010 for grants for the operation of domestic violence and sexual  
23 assault programs;

24 (3) the Department of Corrections for incarceration and probation  
25 programs;

26 (4) the office of victims' rights; or

27 (5) nonprofit victims' rights organizations for grants for services to  
28 crime victims.

29 \* **Sec. 35.** AS 47.17.023 is repealed and reenacted to read

30 **Sec. 47.17.023. Reports from certain persons regarding child**  
31 **pornography.** A person providing, either privately or commercially, film, photo, or

1 visual or printed matter processing, production, or finishing services or computer  
2 installation, repair, or other services, or Internet or cellular telephone services who, in  
3 the process of providing those services, observes a film, photo, picture, computer file,  
4 image, or other matter and has reasonable cause to suspect that the film, photo,  
5 picture, computer file, image, or other matter visually depicts a child engaged in  
6 conduct described in AS 11.41.455(a) shall immediately report the observation to the  
7 nearest law enforcement agency and provide the law enforcement agency with all  
8 information known about the nature and origin of the film, photo, picture, computer  
9 file, image, or other matter.

10 \* **Sec. 36.** AS 47.30.780 is amended to read:

11 **Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,**  
12 **the** [THE] professional person in charge shall at any time discharge a respondent on  
13 the ground that the respondent is no longer gravely disabled or likely to cause serious  
14 harm as a result of mental illness. A certificate to this effect shall be sent to the court,  
15 which shall enter an order officially terminating the involuntary commitment.

16 \* **Sec. 37.** AS 47.30.780 is amended by adding a new subsection to read:

17 (b) The professional person in charge shall give the prosecuting authority 10  
18 days' notice before discharging a respondent who was committed after having been  
19 found incompetent to proceed under AS 12.47.110.

20 \* **Sec. 38.** The uncoded law of the State of Alaska enacted in sec. 36(c), ch. 24, SLA  
21 2007, is amended to read:

22 (c) AS 12.72.025, enacted by sec. 25, **ch. 24, SLA 2007** [OF THIS ACT],  
23 applies to offenses committed before, on, or after the effective date of sec. 25, **ch. 24,**  
24 **SLA 2007** [OF THIS ACT]. A person whose application for post-conviction relief was  
25 denied before the effective date of sec. 25, **ch. 24, SLA 2007** [OF THIS ACT] has  
26 until July 1, 2008, to file a claim described in AS 12.72.025. **This subsection does not**  
27 **authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal**  
28 **Procedure that is not otherwise available under AS 12.72, the Alaska Rules of**  
29 **Criminal Procedure, or other provision of law.**

30 \* **Sec. 39.** AS 12.35.015(f) is repealed.

31 \* **Sec. 40.** AS 11.71.310 and AS 12.20.010 are repealed.

1     \* **Sec. 41.** The uncoded law of the State of Alaska is amended by adding a new section to  
2 read:

3             DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of  
4 Criminal Procedure, is amended to read:

5             (b) **Execution and Return with Inventory.** The warrant shall be executed  
6 and returned within 30 [10] days after its date of issuance. However, upon sworn  
7 application made before the expiration of the initial 30 [10] day period or any  
8 subsequent extension, the court may for good cause extend the execution period for a  
9 reasonable time not to exceed 30 [10] days. Good cause includes protecting the  
10 confidentiality of an ongoing investigation and protecting a person working with  
11 law enforcement authorities on an investigation. The officer taking property under  
12 the warrant

13                 (1) shall give to the person from whom or from whose premises the  
14 property was taken a copy of the warrant, a copy of the supporting affidavits, and  
15 receipt for the property taken, or

16                 (2) shall leave the copies and the receipt at the place from which the  
17 property was taken.

18             The return shall be made promptly and shall be accompanied by a  
19 written inventory of any property taken as a result of the search pursuant to or in  
20 conjunction with the warrant. The inventory shall be made in the presence of the  
21 applicant for the warrant and the person from whose possession or premises the  
22 property was taken, if they are present, or in the presence of at least one credible  
23 person other than the applicant for the warrant or the person from whose possession or  
24 premises the property was taken, and shall be signed by the officer under the penalty  
25 of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a  
26 notary public. The magistrate or judge or the court to which the return is made shall  
27 upon request deliver a copy of the inventory to the person from whom or from whose  
28 premises the property was taken and to the applicant for the warrant.

29     \* **Sec. 42.** The uncoded law of the State of Alaska is amended by adding a new section to  
30 read:

31             INDIRECT COURT RULE AMENDMENT. The provisions of AS 12.72.020(a) and

(b), as amended by secs. 26 and 27 of this Act, and the provisions of AS 12.72.020(d), as added by sec. 28 of this Act, have the effect of amending Rule 35.1, Alaska Rules of Criminal Procedure, by restricting the authority of a court to hear certain applications, claims, or proceedings for post-conviction relief and by prescribing a procedure for a court to determine if an application, claim, or proceeding may be considered.

**\* Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 6 - 9, 14 - 16, 22 - 24, 29 - 31, and 40 of this Act apply to an offense occurring on or after the effective date of this section. References to previous convictions in secs. 8 and 9 of this Act apply to convictions occurring before, on, or after the effective date of those sections.

(b) Sections 5 and 13 of this Act apply to an offense occurring before, on, or after the effective date of this section.

(c) Sections 17, 18, 39, and 41 of this Act apply to search warrants applied for on or after the effective date of this section, regardless of whether the offense occurred before, on, or after the effective date of this section.

(d) Sections 19 - 21, 36, and 37 of this Act apply to procedures occurring after the effective date of this section, regardless of whether the offense occurred before, on, or after the effective date of this section.

(e) Section 25 of this Act applies to applications for criminal extraditions submitted on or after the effective date of this section, regardless of whether the offense occurred before, on, or after the effective date of this section.

(f) Section 12 of this Act applies to offenses occurring and actions arising on or after the effective date of this section.

(g) Sections 26 - 28 and 42 of this Act apply to applications submitted on or after the effective date of this section.

**\* Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of this Act and the application to other persons or circumstances are not affected.

1     \* **Sec. 45.** The uncoded law of the State of Alaska is amended by adding a new section to  
2 read:

3             **RETROACTIVITY.** Section 38 of this Act is retroactive to July 1, 2007.

4     \* **Sec. 46.** Sections 38 and 45 of this Act take effect immediately under AS 01.10.070(c).

5     \* **Sec. 47.** Sections 32 - 34 of this Act take effect January 1, 2009.

6     \* **Sec. 48.** Except as provided in secs. 46 and 47 of this Act, this Act takes effect July 1,  
7 2008.