

SENATE BILL NO. 241

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/27/10

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to post-conviction DNA testing, to the preservation of certain evidence,**
2 **and to the DNA identification registration system; relating to post-conviction relief**
3 **procedures; relating to representation by the public defender; amending Rule 35.1,**
4 **Alaska Rules of Criminal Procedure; and providing for an effective date."**

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

6 * **Section 1.** AS 12.36.020(a) is amended to read:

7 (a) A law enforcement agency may

8 (1) not return property in its custody to the owner or the agent of the
9 owner, **except as provided in AS 12.36.200,** if

10 (A) the property is in custody in connection with a children's
11 court proceeding, a criminal proceeding, or an official investigation of a crime;
12 or

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

- 1 (i) state; or
- 2 (ii) United States, and the United States has commenced
- 3 forfeiture proceedings against the property or has requested the transfer
- 4 of the property for the commencement of forfeiture proceedings; and
- 5 (2) with the approval of the court, transfer the property to another state
- 6 or federal law enforcement agency for forfeiture proceedings by that agency; the court
- 7 having jurisdiction shall grant the approval under this paragraph if the property
- 8 (A) will be retained within the jurisdiction of the court by the
- 9 agency to which the property is being transferred; or
- 10 (B) is
- 11 (i) not needed as evidence; or
- 12 (ii) needed as evidence, and the property is fungible or
- 13 the property's evidentiary value can otherwise be preserved without
- 14 retaining the property within the jurisdiction of the court.

15 * **Sec. 2.** AS 12.36.090 is amended to read:

16 **Sec. 12.36.090. Definitions.** In AS 12.36.010 - 12.36.090 [THIS CHAPTER],

- 17 (1) "final disposition of a case" means the time when all appeals have
- 18 been exhausted or the time when all appeals that could have been taken has expired;
- 19 (2) "law enforcement agency" means a public agency that performs as
- 20 one of its principal functions an activity relating to crime prevention, control, or
- 21 reduction or relating to the enforcement of the criminal law; "law enforcement
- 22 agency" does not include a court.

23 * **Sec. 3.** AS 12.36 is amended by adding a new section to read:

24 **Article 2. Preservation of Evidence.**

25 **Sec. 12.36.200. Preservation of evidence.** (a) Except as otherwise provided in

26 this section and notwithstanding AS 12.36.010 - 12.36.090, an agency shall preserve

- 27 (1) evidence that is obtained in relation to an investigation and relevant
- 28 to the prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434
- 29 for the following periods:

- 30 (A) 18 months after the entry of a judgment of conviction of
- 31 the crime;

1 (B) if the conviction for the crime is appealed, one year after
2 the judgment becomes final by the conclusion of direct review; or

3 (C) if a timely application for post-conviction relief is filed
4 within the periods stated in (A) and (B) of this paragraph, the date that a
5 judgment dismissing or denying the application for post-conviction review
6 becomes final;

7 (2) biological material contained in or found on evidence that is
8 obtained in an investigation and relevant to the prosecution of a person convicted of a
9 felony under AS 11.41, until the person is unconditionally discharged for the crime, or
10 until the periods of time provided in (1) of this subsection have expired, whichever is
11 longer; biological material must be preserved in an amount and manner that is
12 sufficient to develop a DNA profile under technology available at the time that the
13 biological material is preserved.

14 (b) An agency is not required under (a) of this section to preserve physical
15 evidence of a crime that is of a size, bulk, quantity, or physical character that makes
16 preservation impractical or hazardous. If preservation of evidence is impractical or
17 hazardous, the agency shall, before returning or disposing of the evidence, remove and
18 preserve portions of the evidence likely to contain relevant evidence related to the
19 crime in an amount and manner sufficient to retain its evidentiary value and, if
20 appropriate, to permit DNA testing under technology available at the time that the
21 biological material is preserved. An agency shall develop written policies concerning
22 the removal and preservation of samples of evidence for retention under this section.
23 The development of written policies as described in this subsection is not subject to
24 the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).

25 (c) Upon the written request of a person convicted of a crime described in (a)
26 of this section, an agency shall provide an inventory of the evidence that has been
27 preserved under (a)(1) of this section and of the biological material that has been
28 preserved under (a)(2) of this section in connection with the person's conviction.

29 (d) The person who requests evidence that has been preserved under this
30 section shall pay reasonable costs incurred in the retrieval of the evidence from
31 storage.

1 (e) An agency required to preserve evidence or biological material under (a) of
2 this section may return or otherwise dispose of evidence or biological material before
3 the expiration of the time period described in (a) of this section if the agency

4 (1) is not required to preserve the evidence or biological material by
5 court order or under any other provision of federal, state, or municipal law;

6 (2) sends with proof of delivery by United States Postal Service, or a
7 private commercial delivery service, notice of intent to return or otherwise dispose of
8 the evidence or biological material to

9 (A) each person who is convicted of a crime for which the
10 evidence or biological material was preserved under (a) of this section;

11 (B) if known, the attorney of record in the criminal prosecution
12 and the current attorney for each person described in (A) of this paragraph; and

13 (C) the prosecuting authority responsible for prosecuting the
14 crime; and

15 (3) has not received, after 120 days of delivering notice under (2) of
16 this subsection, a written request for continued preservation of the evidence or
17 biological material or an application for post-conviction DNA testing under
18 AS 12.73.010 from a person notified under (2) of this subsection.

19 (f) An agency may petition the court for permission to return or otherwise
20 dispose of the evidence or the biological material if the agency receives a request for
21 continued preservation of evidence or biological material under (e) of this section. The
22 court may grant the petition if the court finds, by a preponderance of evidence, that
23 evidence or biological material preserved under (a) of this section

24 (1) is fungible and the evidentiary value of the property can be
25 preserved without retaining the property; or

26 (2) has no significant evidentiary value.

27 (g) If an agency is requested to produce evidence or biological material, and is
28 unable to locate evidence or biological material required to be preserved under this
29 section, the chief evidence custodian of the agency shall prepare an affidavit
30 describing the evidence or biological material that could not be located and the efforts
31 taken to locate it. The agency shall file the affidavit with the court that entered the

1 judgment in the criminal case to which the biological material or evidence relates. A
2 copy of the affidavit must be sent to the persons identified in (e)(2) of this section.

3 (h) If a court finds that evidence or biological material was disposed of in
4 violation of the provisions of this section, the court may order the remedy the court
5 determines to be appropriate. However, the court may not reverse or vacate a
6 conviction based solely on a violation of the provisions of this section.

7 (i) A person may not bring a civil action for damages against the state or
8 political subdivision of the state and its officers, agents, or employees, or a law
9 enforcement agency and its officers, agents, or employees for a good faith failure to
10 comply with the provisions of this section.

11 (j) For purposes of (a) of this section, that agency shall consider that

12 (1) direct review as provided in (a)(1)(B) of this section concludes on
13 the latest of the following dates:

14 (A) 16 days after entry of the judgment on appeal;

15 (B) if a defendant files a petition for hearing seeking review of
16 the judgment affirming the conviction, 90 days after the denial of the petition
17 or a decision affirming the judgment of conviction;

18 (C) if a defendant seeks review by the United States Supreme
19 Court of the judgment of conviction, 25 days after denial of the petition for
20 writ of certiorari or a decision affirming the judgment of conviction;

21 (2) a conviction occurs on the date a person is sentenced.

22 (k) In this section, unless the context otherwise requires,

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

25 (2) "biological material" means

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

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

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

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

3 (3) "DNA" means deoxyribonucleic acid;

4 (4) "unconditionally discharged" means that a defendant is released
5 from all disability arising under a sentence, including probation and parole.

6 * **Sec. 4.** AS 12.72.010 is amended to read:

7 **Sec. 12.72.010. Scope of post-conviction relief.** A person who has been convicted
8 of, or sentenced for, a crime may institute a proceeding for post-conviction relief if the person
9 claims

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

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

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

15 (4) that there exists evidence of material facts, not previously presented and
16 heard by the court, that requires vacation of the conviction or sentence in the interest of
17 justice; **if the person seeks post-conviction DNA testing to support a claim under this**
18 **paragraph, the person's exclusive method for obtaining that testing is an application**
19 **under AS 12.73;**

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

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

26 (7) that

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

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

31 (C) it is appropriate to retroactively apply the change in law because

1 the change requires observance of procedures without which the likelihood of an accurate
2 conviction is seriously diminished; and

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

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

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

12 * **Sec. 5.** AS 12.72.030 is amended by adding a new subsection to read:

13 (b) A person who files an application for post-conviction relief under
14 AS 12.72 or the Alaska Rules of Criminal Procedure may not pursue discovery related
15 to the application unless the applicant first pleads a prima facie case for relief and the
16 court finds that a prima facie case for relief has been established under AS 12.72 or the
17 Alaska Rules of Criminal Procedure.

18 * **Sec. 6.** AS 12 is amended by adding a new chapter to read:

19 **Chapter 73. Post-Conviction DNA Testing Procedures.**

20 **Sec. 12.73.010. Application for post-conviction DNA testing.** (a) A person
21 convicted of a felony against a person under AS 11.41 who has not been
22 unconditionally discharged may apply to the superior court for an order for DNA
23 testing of evidence. The application must be filed in the court that entered the
24 judgment of conviction, and a copy shall be served on the prosecuting authority
25 responsible for obtaining the conviction.

26 (b) An application filed under (a) of this section must specifically identify the
27 evidence sought to be tested, and must include facts from which the court can make
28 the findings required under AS 12.73.020. The application must also include the
29 following:

30 (1) an affidavit by the applicant that attests to the following:

31 (A) the applicant did not commit the offense for which the

1 applicant was convicted or any lesser included offense;

2 (B) the applicant did not solicit another person to commit, or
3 aid or abet another person in planning or committing, that offense or any lesser
4 included offense; and

5 (C) the applicant did not admit or concede guilt in any official
6 proceeding for the offense that was the basis of the conviction or any lesser
7 included offense;

8 (2) an affidavit by the applicant or the applicant's lawyer stating the
9 results of each DNA test performed on the evidence in the prosecution that resulted in
10 the applicant's conviction;

11 (3) an affidavit by the applicant or the applicant's lawyer describing all
12 previous efforts to obtain DNA testing and any previous application filed under this
13 section or under AS 12.72;

14 (4) an affidavit by the applicant's lawyer in the criminal trial stating the
15 reason that DNA testing was not sought before or during trial, or an affidavit by the
16 applicant or the applicant's lawyer describing the efforts made to obtain the affidavit
17 from the criminal trial lawyer and the reason the applicant was unable to obtain it.

18 (c) A lawyer who represents an applicant under this section shall investigate
19 and, if possible, confirm the accuracy of information provided by the applicant under
20 (b) (2) - (4) of this section.

21 (d) If an applicant is indigent, filing fees must be paid under the provisions of
22 AS 09.19 and counsel shall be appointed under the provisions of AS 18.85.100 to
23 represent the applicant.

24 **Sec. 12.73.020. Findings required for post-conviction DNA testing orders.**

25 The court shall order post-conviction DNA testing of specific evidence if

26 (1) the applicant was convicted of a felony under AS 11.41;

27 (2) the applicant and, if represented, the applicant's lawyer, have
28 submitted the affidavits required by AS 12.73.010(b);

29 (3) the applicant has not in an official proceeding admitted or
30 conceded guilt for the crime that was the basis for the conviction;

31 (4) the evidence sought to be tested was obtained as part of the

1 investigation or the prosecution described in (1) of this section;

2 (5) the evidence either

3 (A) was not subjected to DNA testing, and the applicant did not
4 waive, or the applicant's lawyer did not forgo for tactical reasons, the right to
5 request DNA testing; or

6 (B) was previously subjected to DNA testing, and

7 (i) the applicant is requesting DNA testing using a
8 method or technology that is substantially more probative than the
9 previous DNA testing; and

10 (ii) the applicant did not waive the right to request, or
11 the applicant's lawyer did not forgo for tactical reasons, DNA testing
12 using a method whose probative value was similar to the method to be
13 used in the requested testing;

14 (6) the evidence to be tested has been subject to a chain of custody and
15 retained under conditions that ensure that the evidence has not been substituted,
16 contaminated, or altered in any manner material to the proposed DNA testing;

17 (7) the proposed DNA testing is reasonable in scope, uses scientifically
18 sound methods, and is consistent with accepted forensic practices;

19 (8) the applicant identifies a theory of defense that

20 (A) is not inconsistent with a defense presented at trial; and

21 (B) would establish the applicant's innocence;

22 (9) if the applicant was convicted after a trial, the identity of the
23 perpetrator was a disputed issue in the trial;

24 (10) there is a reasonable probability, in light of all available evidence,
25 regardless of whether the evidence was introduced at the applicant's trial, that the
26 requested DNA testing will produce new material evidence that

27 (A) would support the theory of defense described in (8) of this
28 section; and

29 (B) could conclusively establish that the applicant is innocent;

30 (11) the applicant consents to provide a DNA sample for purposes of
31 comparison and to entry of the results into the DNA identification registration system

1 under AS 44.41.035 and into any other law enforcement database; and

2 (12) the application is timely as described in AS 12.73.040.

3 **Sec. 12.73.030. Summary dismissal and response.** (a) If an application under
4 AS 12.73.010(a) does not set out the specific facts necessary for the court to make the
5 findings required under AS 12.73.020 or does not comply with AS 12.73.010(b), the
6 court shall deny the application without further proceedings.

7 (b) If an application filed under AS 12.73.010(a) is not denied under (a) of this
8 section, the prosecuting authority shall file a response within 45 days of service of the
9 application. The court shall conduct an evidentiary hearing to resolve any disputed
10 facts.

11 **Sec. 12.73.040. Timeliness.** In determining whether an application is timely
12 under AS 12.73.020(12),

13 (1) there is a presumption of timeliness if the application is filed before
14 three years after the date of conviction; this presumption may be rebutted if the court
15 finds that the application is based solely upon information used in a previously denied
16 application; and

17 (2) there is a presumption of untimeliness if the application is filed
18 three years or more after conviction; this presumption may be rebutted if the court
19 finds

20 (A) that the applicant was incompetent and the incompetence
21 substantially contributed to the delay in filing the application; or

22 (B) other good cause for filing three years or more after
23 conviction.

24 **Sec. 12.73.050. Testing procedures.** (a) If the court grants the application and
25 DNA samples for comparison purposes are required, samples taken from the applicant
26 or a prisoner must be collected at a law enforcement or correctional facility. If the
27 DNA sample is being collected from a person other than the applicant or a prisoner,
28 the sample must be taken by a law enforcement officer or other authorized person at a
29 location that is convenient for the person from whom the sample is being collected and
30 the person collecting the sample.

31 (b) The court may not order that a person other than the applicant provide a

1 DNA sample for comparison purposes unless that person is first afforded notice and an
2 opportunity to be heard by the court. The results of DNA testing of a sample provided
3 by a person other than the applicant may not be made available to the DNA
4 identification registration system under AS 44.41.035 or to any other law enforcement
5 database unless specifically ordered by the court.

6 (c) DNA testing ordered under this section shall be performed at the state's
7 expense and at a laboratory operated or approved by the Department of Public Safety.
8 If, after completion of the testing ordered under this section, an applicant requests
9 additional testing, any additional testing ordered by the court at the applicant's request
10 must be at the applicant's expense. If the court orders additional testing by another
11 laboratory at the request of the applicant, the laboratory operated or approved by the
12 Department of Public Safety shall preserve a portion of the evidence for later testing.
13 A laboratory selected by the applicant to perform testing under this section must
14 comply with the quality assurance standards for DNA adopted by the United States
15 Department of Justice and be accredited by the American Society of Crime Laboratory
16 Directors Laboratory Accreditation Board or the accepted as equivalent by the
17 Department of Public Safety. The applicant shall pay the reasonable costs incurred in
18 the retrieval from storage of the material to be tested.

19 (d) Except as provided in (b) of this section, the results of testing ordered
20 under this section shall be entered into the DNA identification registration system
21 under AS 44.41.035 and into any other law enforcement database available to the
22 Department of Public Safety.

23 **Sec. 12.73.060. Post-conviction testing by stipulation.** The provisions of
24 AS 12.73.010 - 12.73.900 do not prohibit an applicant and the prosecuting authority
25 from agreeing to conduct post-conviction DNA testing without the person filing an
26 application under this chapter. The parties may also stipulate to the payment of costs
27 for the DNA testing and other costs associated with the terms of the agreement.

28 **Sec. 12.73.900. Definitions.** In this chapter, unless the context requires
29 otherwise,

30 (1) "DNA" means deoxyribonucleic acid;

31 (2) "innocence" or "innocent" means that the applicant was not a

1 perpetrator of or an accomplice to the offense or any lesser included offenses for
2 which the applicant was convicted;

3 (3) "prisoner" has the meaning given in AS 33.30.901;

4 (4) "unconditionally discharged" means that a defendant is released
5 from all disability arising under a sentence, including probation and parole.

6 * **Sec. 7.** AS 18.85.100 is amended by adding a new subsection to read:

7 (g) An indigent person is entitled to representation under (a) and (b) of this
8 section for purposes of bringing an application for post-conviction DNA testing under
9 AS 12.73.

10 * **Sec. 8.** AS 44.41.035(b) is amended to read:

11 (b) The Department of Public Safety shall collect for inclusion into the DNA
12 identification registration system a blood sample, oral sample, or both, from (1) a
13 person convicted in this state of a crime against a person or a felony under AS 11 or
14 AS 28.35 or a law or ordinance with elements similar to a crime against a person or a
15 felony under AS 11 or AS 28.35, (2) a minor [16 YEARS OF AGE OR OLDER,]
16 adjudicated as a delinquent in this state for an act **committed when the minor was 16**
17 **years of age or older**, that would be a crime against a person or a felony under AS 11
18 or AS 28.35 if committed by an adult or for an act that would violate a law or
19 ordinance with elements similar to a crime against a person or a felony under AS 11 or
20 AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA
21 donor for use in forensic validation, forensic protocol development, quality control, or
22 population or statistical data bases, (5) a person required to register as a sex offender
23 or child kidnapper under AS 12.63, and (6) a person arrested for a crime against a
24 person or a felony under AS 11 or AS 28.35, or a law or ordinance with elements
25 similar to a crime against a person or a felony under AS 11 or AS 28.35. The
26 department also may collect for inclusion into the DNA identification registration
27 system a blood sample, oral sample, or tissue sample from crime scene evidence or
28 from unidentified human remains. The DNA identification registration system consists
29 of the blood, oral, or tissue samples drawn under this section, any DNA or other blood
30 grouping tests done on those samples, and the identification data related to the samples
31 or tests. Blood samples, oral samples, and tissue samples not subject to testing under

1 this section, and test or identification data related to those samples, may not be entered
2 into, or made a part of, the DNA identification registration system.

3 * **Sec. 9.** AS 44.41.035(g) is amended to read:

4 (g) A person **or minor** from whom a sample has been collected under this
5 section

6 **(1) may inspect and obtain a copy of the identification data regarding**
7 **the person or minor contained within the DNA identification registration system; and**

8 **(2) may request the Department of Public Safety to destroy the**
9 **material in the system regarding the person under the provisions described in (i)**
10 **of this section.**

11 * **Sec. 10.** AS 44.41.035(i) is amended to read:

12 (i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT
13 ORDER,] destroy the material in the system relating to a person **or minor on the**
14 **written request of the person or minor, if the request is accompanied by a**
15 **certified copy of a court order making the written findings required by this**
16 **subsection.** The court shall issue **an** [THE] order **under this subsection** if the
17 person's or minor's DNA was included in the system under

18 (1) (b)(1) or (2) of this section, and the court **order establishes**
19 [DETERMINES] that

20 (A) the conviction or adjudication that subjected the person to
21 having a sample taken under this section **was** [IS] reversed; and

22 (B) the person

23 (i) **was** [IS] not retried, readjudicated, or convicted or
24 adjudicated for another crime that requires having a sample taken under
25 this section; or

26 (ii) after retrial, **was** [IS] acquitted of the crime or, after
27 readjudication for the crime, **was** [IS] not found to be a delinquent, and
28 **was** [IS] not convicted or adjudicated for another crime that requires a
29 sample under this section;

30 (2) (b)(6) of this section, and the court **order establishes**
31 [DETERMINES] that

1 (A) the person arrested was released without being charged;
2 [OR]

3 (B) the criminal complaint, indictment, presentment, or
4 information for the offense for which the person was arrested was dismissed,
5 and a criminal complaint, indictment, presentment, or information for an
6 offense requiring submission of a DNA sample was [IS] not refiled; or

7 **(C) the person was found by the trier of fact to be not guilty**
8 **of the offense for which the person was arrested and was not convicted of**
9 **another offense requiring submission of a DNA sample under (b)(1) or (2)**
10 **of this section.**

11 * **Sec. 11.** AS 44.41.035(k) is amended to read:

12 (k) The provisions of this section apply to a person or a minor from another
13 state that this state has accepted under any interstate corrections or probation
14 agreement or compact, regardless of whether the person or minor is confined or
15 released, if the person was convicted or the minor was adjudicated for [OF] an
16 offense that is similar to an offense described in (b) of this section.

17 * **Sec. 12.** AS 44.41.035(o) is amended to read:

18 (o) A person or minor may not bring a civil action against the state or a
19 municipality, or their employees or agents, for actions arising out of DNA collection
20 in conformity with this section.

21 * **Sec. 13.** AS 44.41.035 is amended by adding subsections to read:

22 (r) A DNA sample collected or placed in the DNA identification registration
23 system that was taken or retained in good faith may be used as provided by law in a
24 criminal investigation. Evidence obtained from a match from a data collection system
25 may be used in a criminal prosecution or juvenile adjudication if the DNA sample was
26 taken or retained in good faith, even if the DNA sample is later removed from the
27 DNA identification registration system.

28 (s) If a sample collected under (b) of this section does not contain sufficient
29 material necessary to obtain an accurate DNA identification authorized under this
30 section, the Department of Public Safety or other agency authorized by the
31 Department of Public Safety may collect another sample.

1 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 INDIRECT COURT RULE CHANGE. AS 12.73.010 - 12.73.900, added by sec. 6 of
4 this Act, have the effect of amending Rule 35.1, Alaska Rules of Criminal Procedure, relating
5 to post-conviction relief procedure.

6 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 CONDITIONAL EFFECT. AS 12.73.010 - 12.73.900, added by sec. 6 of this Act,
9 take effect only if sec. 14 of this Act receives the two-thirds majority vote of each house
10 required by art. IV, sec. 15, Constitution of the State of Alaska.

11 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 TASK FORCE ON STANDARDS FOR PRESERVATION OF EVIDENCE. (a) The
14 Task Force on Standards for Preservation of Evidence is created in the Department of Law.
15 The task force consists of the following:

- 16 (1) the attorney general, who serves as the chair of the task force;
- 17 (2) the commissioner of public safety;
- 18 (3) a chief of a municipal police department not on the state's interconnected
19 road system;
- 20 (4) a chief of a municipal police department;
- 21 (5) the state medical examiner appointed under AS 12.65.015;
- 22 (6) a representative of the state crime laboratory;
- 23 (7) a representative from the court system;
- 24 (8) the victims' advocate appointed under AS 24.65.020.

25 (b) Task force members listed in (a)(3), (4), and (6) of this section are appointed by
26 the governor. Except for task force members appointed under (a)(7) and (a)(8) of this section,
27 task force members serve at the pleasure of the governor. The task force member listed in
28 (a)(7) of this section is appointed by the chief justice of the supreme court and serves at the
29 pleasure of the chief justice.

30 (c) A task force member may select a designee from the same agency or organization
31 to act on the person's behalf as a member of the task force.

1 (d) No later than December 31, 2012, the task force shall

2 (1) recommend standards and protocols regarding the identification,
3 collection, storage, organization, cataloging, and retrieval of evidence and biological
4 materials;

5 (2) identify possible sources of financing for the costs of implementing the
6 standards and protocols recommended under (1) of this subsection;

7 (3) recommend minimum qualifications and training programs for law
8 enforcement officers and other employees who are responsible for the identification, storage,
9 organization, and cataloging of evidence and biological materials; and

10 (4) report its findings and recommendations to the governor and the
11 legislature.

12 (e) Task force members do not receive compensation as members of the task force.
13 Members of the task force who are not state employees are entitled to per diem and travel
14 expenses in the same manner permitted for members of state boards and commissions under
15 AS 39.20.180. Per diem and travel expenses for members of the commission who are
16 representatives of a state agency are the responsibility of that agency.

17 (f) Meetings of the task force are exempt from AS 44.62.310 and 44.62.312 (Open
18 Meetings of Governmental Bodies).

19 (g) Records of the task force are not subject to inspection and copying as public
20 records under AS 40.25.110 - 40.25.220.

21 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 APPLICABILITY. (a) AS 12.36.200, enacted in sec. 3 of this Act, applies to all
24 evidence in the possession of an agency defined in AS 12.36.200(k) on or after January 1,
25 2011 for evidence collected before, on, or after the effective date of this Act.

26 (b) AS 12.73.010 - 12.73.900, enacted in sec. 6 of this Act, apply to offenses
27 committed before, on, or after the effective date of this Act.

28 (c) Notwithstanding any other provision of law, a person whose conviction was
29 entered before July 1, 2010, has until July 1, 2013 to file an application under AS 12.73.010 -
30 12.73.900.

31 * **Sec. 18.** Section 16 of this Act is repealed January 1, 2013.

1 * **Sec. 19.** This Act takes effect July 1, 2010.