STATE OF ALASKA

Legislative Affairs Agency

A

REPORT TO THE

THIRTY-THIRD STATE LEGISLATURE

Listing Alaska Statutes with
Delayed Repeals or Delayed Amendments
and
Examining Court Decisions
and Opinions of the
Attorney General
Construing Alaska Statutes

Prepared by
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DECEMBER 2024

A REPORT TO THE THIRTY-THIRD STATE LEGISLATURE

Listing Alaska Statutes with Delayed Repeals, Delayed Enactments, and Delayed Amendments and Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes

The report lists Alaska Statutes that will be amended or repealed between February 28, 2025, and March 1, 2026, according to laws enacted before the 2025 legislative session.

The report also examines published cases construing Alaska Statutes that were decided by the courts and reported between October 1, 2023, and September 30, 2024,

and

Opinions of the Attorney General that were made available through Internet distribution between October 1, 2023, and September 30, 2024.

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INTRODUCTION

AS 24.20.065(a) requires that the Legislative Council annually examine published opinions of state and federal courts and of the Department of Law that rely on state statutes and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;
(2) there are court or agency expressions of dissatisfaction with state statutes or the common law of the state;
(3) the opinions, decisions, or regulations indicate unclear or ambiguous statutes;
(4) the courts have modified or revised the common law of the state.

Under AS 24.20.065(b) the Council is to make a comprehensive report of its findings and recommendations to the members of the Legislature at the start of each regular session.

This edition of the review by the attorneys of the Legislative Affairs Agency examines the opinions of the Alaska Supreme Court, the Alaska Court of Appeals, the United States Court of Appeals for the Ninth Circuit, and the United States District Court for the District of Alaska. As in the past, those cases where the court construes or interprets a section of the Alaska Statutes are analyzed. Those cases where no statute is construed or interpreted or where a statute is involved but it is applied without particular examination by the court are not reviewed. In addition, those major cases that have already received legislative scrutiny are not analyzed. However, cases that reject well-established common law principles or reverse previously established case law that might be of special interest to the legislature are analyzed. Because the purpose of the report is to advise members of the legislature on defects in existing law, we have generally not analyzed those cases where the law, though it may have been criticized, has been changed since the decision or opinion was published.

The review also covers formal and informal opinions of the Attorney General. As with court opinions, we have only analyzed those opinions where a provision of the Alaska Statutes is construed or interpreted, or which might otherwise be of special interest to the legislature.

This report also includes a list of Alaska Statutes that, absent any action by the 2025 Legislature, will be repealed or amended before March 1, 2026, because of repeals or amendments enacted by previous legislatures with delayed effective dates.

Reviews of state court decisions, federal court decisions, and opinions of the Attorney General were prepared by Margret Bergerud, Conran Gunther, Allison Radford, and Ian Walsh, Legislative Counsel, and Linda Bruce, Assistant Revisor of Statutes. Linda Bruce, Assistant Revisor of Statutes, prepared the list of delayed repeals, enactments, and amendments.

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DELAYED REPEALS, ENACTMENTS OR AMENDMENTS

taking effect between February 28, 2025, and March 1, 2026, according to laws enacted before the 2025 legislative session

Laws enacted in 2015

Ch. 3, SLA 2015, sec. 6 – School bond debt reimbursement

AS 14.11.014(d)	Repealed July 1, 2025
AS 14.11.100(s)	Repealed July 1, 2025
AS 14.11.102(c)	Repealed July 1, 2025

Laws enacted in 2018

Ch. 73, SLA 2018, sec. 11, as amended by ch. 13, SLA 2019, sec. 102 – Pilot program for incentivized education curricula

AS 14.07.180(e)	Repealed July 1, 2025
AS 14.07.180(f)	Repealed July 1, 2025
AS 14.07.180(g)	Repealed July 1, 2025
AS 14.07.180(h)	Repealed July 1, 2025
AS 14.07.180(j)	Repealed July 1, 2025
AS 14.07.180(*l*)	Repealed July 1, 2025
AS 14.07.180(m)	Repealed July 1, 2025
AS 14.07.180(o)(1)	Repealed July 1, 2025
AS 14.07.180(o)(3)	Repealed July 1, 2025
AS 14.07.180(o)(4)	Repealed July 1, 2025

Laws enacted in 2024

Ch. 28, SLA 2024, sec. 27 – Assessor certification

AS 29.45.115	Enacted January 1, 2026

Ch. 34, SLA 2024, sec. 11 – Agriculture loans

AS 03.10.020(a)	Amended July 1, 2025
AS 03.10.030(c)	Amended July 1, 2025
AS 03.10.030(g)	Amended July 1, 2025

Ch. 39, SLA 2024, sec. 10 – Insurance data security risk assessment and information security program

AS 21.23.250	Enacted January 1, 2026
AS 21.23.260(a)	Enacted January 1, 2026
AS 21.23.260(b)	Enacted January 1, 2026
AS 21.23.260(c)(1)	Enacted January 1, 2026
AS 21.23.260(c)(2)	Enacted January 1, 2026
AS 21.23.260(c)(3)	Enacted January 1, 2026
AS 21.23.260(c)(4)	Enacted January 1, 2026
AS 21.23.260(c)(5)	Enacted January 1, 2026
AS 21.23.260(c)(6)	Enacted January 1, 2026
AS 21.23.260(c)(9)	Enacted January 1, 2026

AS 21.23.260(c)(10)	Enacted January 1, 2026
AS 21.23.260(c)(11)	Enacted January 1, 2026
AS 21.23.260(d)	Enacted January 1, 2026
AS 21.23.260(e)	Enacted January 1, 2026
AS 21.23.260(f)	Enacted January 1, 2026
AS 21.23.260(g)	Enacted January 1, 2026

Ch. 44, SLA 2024, sec. 26 – Associate counselors; marital and family therapists

AS 08.02.110(a)	Amended July 1, 2025
AS 08.02.130(j)(1)	Amended July 1, 2025
AS 08.29.020(a)	Amended July 1, 2025
AS 08.29.100(a)	Amended July 1, 2025
AS 08.29.110(a)	Amended July 1, 2025
AS 08.29.120(a)	Amended July 1, 2025
AS 08.29.210	Repealed July 1, 2025
AS 08.29.220	Amended July 1, 2025
AS 08.29.400(a)	Amended July 1, 2025
AS 08.63.100(a)	Amended July 1, 2025
AS 08.63.100(b)	Amended July 1, 2025
AS 08.63.110(c)	Amended July 1, 2025
AS 08.63.130	Repealed July 1, 2025
AS 08.63.900(3)	Repealed July 1, 2025
AS 08.63.900(6)	Amended July 1, 2025
AS 08.86.180(d)	Amended July 1, 2025
AS 09.65.300(a)	Amended July 1, 2025
AS 09.65.300(c)(1)	Amended July 1, 2025
AS 18.29.190(9)	Amended July 1, 2025
AS 21.36.090(d)	Amended July 1, 2025
AS 47.07.900(16)	Amended July 1, 2025
AS 47.30.915(16)	Amended July 1, 2025

Ch. 49, SLA 2024, sec. 4 – Supplemental nutrition assistance program

AS 47.25.980(a)	Amended July 1, 2025

PLEASE NOTE: "Sunsets" of boards and commissions under AS 08.03.010 and AS 44.66.010 are not reflected in the list above. Also, the list does not include repeals of uncodified law, including sunset of advisory boards and task forces, and pilot projects of limited duration created in uncodified law.

ANALYSIS OF COURT CASES AND OPINIONS OF THE ATTORNEY GENERAL

Art. I, sec. 1, Constitution of the State of Alaska
AS 47.10.084
AS 47.10.087
AS 47.30.690
AS 47.30.700 - 47.30.815

THE OFFICE OF CHILDREN'S SERVICES MUST PROMPTLY NOTIFY THE PARTIES TO A CHILD-IN-NEED-OF-AID CASE WHEN SEEKING TO ADMIT THE CHILD TO A PSYCHIATRIC FACILITY; THE CHILD IS ENTITLED TO A COURT HEARING AS SOON AS REASONABLY POSSIBLE AFTER ADMISSION.

A child who was in the custody of the Office of Children's Services (OCS) was admitted first at a local hospital and then at North Star, an acute psychiatric hospital for minors. OCS waited 10 days before notifying the parties to the child's child-in-need-of-aid (CINA) case about the "change in placement" to the local hospital and one to two days after admitting the child to North Star. Under AS 47.10.087, judicial review is required when OCS seeks to place a child in a secure residential psychiatric treatment facility. After 46 days of continuous hospitalization, a court held a hearing to decide whether her hospitalization was justified. The superior court ruled that AS 47.10.087 applied to this case, that the requirements of that statute had been met, and authorized an additional 90 days of commitment to North Star. The child's tribe appealed, arguing the superior court should have applied the civil commitment statutes instead, which would require the court to hold a hearing within several days of commitment.

On appeal, the Alaska Supreme Court explained that OCS has authority under AS 47.10.084 to seek treatment for the psychiatric emergency of a child in its care. The court found that AS 47.10.087 did not apply because North Star is not a secure residential psychiatric treatment center as defined in the statute and that nothing in the CINA statutes prohibited OCS from admitting the child at either facility. The court next concluded "that OCS was not required by statute to use the civil commitment statutes outlined in AS 47.30 to admit" the child to either facility because nothing in the statutes expressly limits OCS's authority to provide medical care to a child under AS 47.10 and noted that neither facility qualified as a designated treatment facility for purposes of civil commitment. The court however observed that the tribe's concerns that the statutory scheme leaves a gap in oversight for non-designated

acute psychiatric hospitals like North Star were "not unfounded." But the court declined to rewrite the statutes since that is the role of the legislature and the gap could be either an intentional policy of the legislature or an oversight. The court instead ruled that the child's hospitalization for emergency psychiatric care for 46 days without timely notice and a hearing violated the child's constitutional procedural due process rights because the delay created a substantial risk of unnecessary or unnecessarily prolonged hospitalization. The court therefore reversed the superior court's order authorizing the child's continued placement at North Star.

Native Vill. of Kwinhagak v. Dep't of Health & Soc. Servs., Off. of Children's Servs., 542 P.3d 1099 (Alaska 2024).

Legislative review is recommended if the legislature wishes to establish statutory timelines and procedural mechanisms for children in need of aid who are admitted by OCS to a non-designated acute psychiatric hospital.

Art. I, sec. 7, Constitution of the State of Alaska
AS 25.20.010
AS 47.10.080
AS 47.10.084

STATUTES OF LIMITATIONS ARE NOT TOLLED DURING THE PERIOD OF TIME A CHILD REMAINS IN OCS CUSTODY AFTER REACHING 18 YEARS OF AGE.

The plaintiff was placed in the custody of the Office of Children's Services (OCS) as a child in need of aid. OCS then placed the plaintiff in the custody of a woman who later adopted him. Around the age of 13, OCS removed the plaintiff from his adoptive mother's custody due to horrific abuse occurring in the home. Following his removal, several of his siblings sued OCS for failure to investigate before placing them and failing to follow up on reports of abuse. The plaintiff did not join the suit but did retain his own attorney when he turned 18 with the intent of filing a lawsuit against OCS. The siblings settled their lawsuit without the plaintiff's participation. The plaintiff remained in OCS custody until he was 19.

Nearly three years after turning 18 and two years after leaving OCS custody, the plaintiff filed suit against OCS. OCS moved to dismiss the complaint on the basis that the claims were barred by the two-year statute of limitations. The plaintiff countered that he did not reach the age of majority until he was released from OCS custody, that OCS should be estopped

from arguing otherwise since it had previously argued that he was mentally incompetent during that time, and that equitable tolling should apply. The superior court rejected the plaintiff's arguments and granted OCS's motion to dismiss. The plaintiff appealed.

On appeal, the Alaska Supreme Court first found that AS 47.10.080 and AS 47.10.084 do not create exceptions to the statute of limitations. The court explained that the statute of limitations is tolled until a person reaches the age of majority, which is defined under AS 25.20.010 as 18 unless another statute requires otherwise. The court declined to characterize AS 47.10.080 as a statutory exception because the creation of such an exception must be explicit and the use of the term "child" in AS 47.10.080 was not itself sufficient. The court determined that the text and structure of AS 47.10.084 demonstrated that a child who turns 18 obtains the legal rights of majority, including the rights to obtain legal representation and make legal decisions, even if the child remains in OCS custody. The court stated that this interpretation was supported by the legislature's goal of "enabling young adults in extended foster care to make crucial decisions about their lives." Next, the court concluded that the plaintiff's right to access the courts, provided by the due process clause of the Alaska Constitution, was not impaired because the governmental action did not create an insurmountable barrier to the court. For these reasons, the court held that the statute of limitations is not tolled for a person who remains in OCS custody after reaching the age of 18. The court also concluded that the plaintiff did not meet the requirements for collateral estoppel, judicial estoppel, or equitable tolling. As a result, the court held that the plaintiff's claims were barred by the two-year statute of limitations and affirmed the superior court's judgment.

Blake J. v. State, 554 P.3d 430 (Alaska 2024).

Legislative review is not recommended unless the legislature wishes for statutes of limitations to be tolled for a child who remains in OCS custody after turning 18.

Art. II, sec. 2, Constitution of the State of Alaska
AS 01.10.055
AS 15.25.043

THE GENERAL RESIDENCY CRITERIA IN AS 01.10.055 DETERMINE WHETHER A LEGISLATIVE CANDIDATE MEETS THE CONSTITUTIONAL ALASKA RESIDENCY REQUIREMENT PRIOR TO FILING FOR OFFICE.

A candidate filed to run for office as a state legislator. Under art. II, sec. 2 of the Alaska Constitution, a legislative candidate must, among other things, have been "a resident of Alaska for at least three years" immediately prior to filing for office. The candidate certified that she met this residency requirement and the Division of Elections approved her candidacy. The candidate's eligibility for office was not challenged at the time and she won election.

The same day the Division of Elections certified the election results, the candidate's opponent and several other voters in the candidate's district filed a lawsuit challenging the candidate's eligibility for office. The challengers alleged that the candidate did not meet the constitutional requirement to have been an Alaska resident for three years. The superior court dismissed the lawsuit. Relying on the specific residency criteria for candidates in AS 15.25.043, the court found that the candidate met the Alaska residency requirement.

On appeal, the Alaska Supreme Court affirmed the superior court's finding that the candidate met the three-year Alaska residency requirement, but for different reasons than the superior court. The Alaska Supreme Court explained that the residency criteria in AS 15.25.043 only apply to the specific determination of a candidate's residency within a particular house district, not the broader determination of a candidate's Alaska residency. Without a specific statute that controls this broader residency determination, the Alaska Supreme Court concluded that the "general catch-all" residency criteria in AS 01.10.055 apply. Based on the criteria in AS 01.10.055, the Alaska Supreme Court concluded that the candidate met the constitutional three-year Alaska residency requirement.

Because this opinion was decided by a two-to-one vote with only three justices participating, its precedential value is limited under Appellate Rule 106(b).

Vazquez v. State, 544 P.3d 1178 (Alaska 2024).

Legislative review is not recommended unless the legislature wishes to enact specific criteria for determining a legislative candidate's Alaska residency.

Art. VIII, Constitution of the State of Alaska
Art. X, sec. 11, Constitution of the State of Alaska
AS 16.05.790
AS 16.20.010
AS 29.35.260(c)

AN ORDINANCE BARRING TRAPPING IN CERTAIN AREAS FOR THE PURPOSE OF PUBLIC SAFETY IS NOT PROHIBITED BY STATE LAW.

The City of Valdez enacted an ordinance regulating animal trapping within its limits. The ordinance generally allowed trapping for both recreational and subsistence purposes, but barred trapping in certain areas of the city to protect persons, domesticated animals, and pets from the hazards of trapping activities. Several state and national trappers' associations (trappers) filed suit alleging that the ordinance violated AS 16.05.790 and art. VIII of the Alaska Constitution and was preempted by state statutes and regulations and the Alaska Constitution. The trappers argued that the state has "pervasive state authority" over natural resources because art. VIII directs the legislature to "provide for natural resources management" and the legislature has vested the sole authority to regulate trapping with the state Board of Game and the commissioner of fish and game. The city asserted that the ordinance was not impliedly prohibited by state law and was within its authority to regulate public safety, protection of property, and land use under art. X, sec. 11 of the Alaska Constitution and AS 29.35.260(c). The superior court granted summary judgement in favor of Valdez.

On appeal, the Alaska Supreme Court explained that an ordinance is impliedly prohibited if it "implicates an area of 'pervasive state authority.' If it does not, the ordinance is impliedly prohibited if it and state law are 'so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.'" The court stated that whether the ordinance implicated an area of "pervasive state authority" was "a close case," requiring the balancing of "two compelling constitutional grounds — home rule municipalities' broad powers and state authority over natural resource management." The court declined to find "that any ordinance that affects wildlife or resource management is impliedly prohibited . . . ." The court instead determined that this was not an instance of "pervasive state authority" because the ordinance was enacted under the city's public safety and land use powers, which are explicitly granted to municipalities, rather than to exercise control over natural resources. The court also noted that the legislature has not granted the board or the commissioner exclusive authority over trapping and that "nothing in the statutory language suggests that other governmental entities are prohibited from enacting ordinances that affect trapping." The court held that the ordinance limiting

trapping in certain city areas for public safety purposes was not substantially irreconcilable with the state's authority to adopt hunting and trapping regulations for purposes of conservation and development and was thus not impliedly prohibited by state law.

Alaska Trappers Ass'n, Inc. v. City of Valdez, 548 P.3d 332 (Alaska 2024).

Legislative review is not recommended unless the legislature wishes to prohibit municipalities from regulating trapping.

Alaska Civil Rule 24
AS 25.24.150(c)
AS 25.24.310

WHILE IT MAY BE APPROPRIATE IN RARE CIRCUMSTANCES, A CHILD MAY NOT ORDINARILY INTERVENE IN CUSTODY LITIGATION BETWEEN PARENTS.

Two parents were engaged in contentious custody litigation related to their teenage child, including a civil custody case and multiple petitions for domestic violence protective orders. The superior court appointed a guardian ad litem (GAL) with the Office of Public Advocacy under AS 25.24.310(c) to advocate for the child's best interests due to "extraordinary conflict between the parties and the initial indications that the child may have been influenced by one or both parents against the other, and the difficulties arranging a neutral and unbiased interview with the child." Based on the evidence presented and the GAL's recommendations, the court evaluated the child's best interests under AS 25.24.150(c) and granted the father interim primary physical and sole legal custody of the child.

The child then retained a private attorney and filed a motion to intervene in his parents' custody case. The child argued that he had a right to intervene under Alaska Civil Rule 24(a), or alternatively, that he should be able to permissively intervene under Civil Rule 24(b). The court denied the child's motion to intervene, in part because it "would further complicate this already litigious proceeding." The child appealed.

On appeal, the Alaska Supreme Court held that the superior court did not err by denying the child's motion to intervene. The court explained that the civil custody framework "provides multiple mechanisms for consideration of a child's custody related preferences where appropriate" in a custody case, without the child's formal intervention. While AS 25.24.310(a)

does contemplate that an attorney may represent a child in unusual circumstances, the court held that the statute does not mandate routine intervention by children as parties in custody litigation. The court further held that intervention was not required under Civil Rule 24(a) because the child's interests were adequately represented by existing parties, including the parents and the GAL, and it was not an abuse of discretion to deny permissive intervention under Civil Rule 24(b) because it "would likely lead to undue delay and prejudice to the parties" and "undermine [the child's] best interests on many levels." Therefore, although a child's formal intervention may be appropriate "in rare circumstances," a child may not ordinarily intervene in custody litigation between parents.

Oscar M. v. Marilyn P., 555 P.3d 40 (Alaska 2024).

Legislative review is not recommended.

Alaska Civil Rule 82
AS 09.60.010

SOME MEMBERS OF AN ASSOCIATION HAVING A DIRECT ECONOMIC INCENTIVE IN A SUIT DOES NOT, ON ITS OWN, PREVENT THE ASSOCIATION FROM QUALIFYING AS A CONSTITUTIONAL CLAIMANT UNDER AS 09.60.010.

Several trade associations sued the state and a ballot initiative sponsor, alleging that the sponsor paid some petition circulators more than the statutory maximum of $1 per signature. Both the trade associations and the initiative sponsor made claims concerning constitutional rights. The superior court concluded that the statutory maximum was unconstitutional and dismissed the suit. The Alaska Supreme Court affirmed the superior court's decision.

The initiative sponsor then asked the superior court for full reasonable attorney fees as a prevailing constitutional claimant under AS 09.60.010(c)(1), which states that "a claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the [suit], has prevailed in asserting" a constitutional right is entitled to "full reasonable attorney fees and costs." The trade associations argued they were immune from liability for attorney fees because they too qualified as constitutional claimants under AS 09.60.010(c)(2), which prohibits a court from ordering a non-prevailing constitutional claimant to pay the opposing party's attorney fees if the suit "was not frivolous, and the claimant did not have a sufficient

economic interest to bring the [suit]." The superior court ruled that both parties qualified as constitutional claimants and declined to award full reasonable attorney fees to the initiative sponsor. However, the court still awarded the initiative sponsor standard attorney fees under Alaska Civil Rule 82. The trade associations appealed this award.

On appeal, the Alaska Supreme Court agreed with the trade associations that they were immune from liability for attorney fees, including under Alaska Civil Rule 82, because they were constitutional claimants. The court explained that, to qualify as a constitutional claimant under AS 09.60.010, the litigant's constitutional claims must not be brought for the "primary purpose" of advancing the litigant's "direct economic interest." The court noted that the trade associations' constitutional arguments were not frivolous, they did not ask for monetary relief, and the suit would not have a direct economic impact on the associations. The court specifically determined that potential economic impact by the initiative on some trade association members, which would still be subject to voter approval, was "too diffuse to constitute direct economic impact" on the trade associations' interests. The trade associations thus qualified as non-prevailing constitutional claimants under AS 09.60.010(c)(2) and were protected from paying their opponents' attorney fees.

Vote Yes for Alaska's Fair Share v. Res. Dev. Council for Alaska, Inc., 539 P.3d 482 (Alaska 2023).

Legislative review is not recommended.

Criminal Rule 32(e)
AS 18.66.990(3)
AS 18.66.990(5)

THE DEFINITION OF DOMESTIC VIOLENCE IS SO BROAD THAT IT IS POTENTIALLY PROBLEMATIC IN CERTAIN CIRCUMSTANCES.

The defendant was a high school teacher who engaged in sexual conduct with a minor student for several months. During pretrial proceedings, the defendant and his wife attempted to assert the spousal immunity and marital communications privileges under Alaska Evidence Rule 505(a) and (b). However, the privileges may not be asserted when a spouse is charged with a "crime involving domestic violence," which is defined under AS 18.66.990(3) to include a crime committed by one "household member" against another "household member." Under AS 18.66.990(5), a "household member" is defined, in part, to include "adults or minors who are dating or who have dated," and "adults or minors who are

engaged in or who have engaged in a sexual relationship." The superior court found that the defendant and the student qualified as "household members" under this definition. The superior court therefore ruled that the abuse constituted a crime of domestic violence for purposes of precluding the use of either marital privilege at trial. The Court of Appeals permitted interlocutory review of the decision and affirmed the superior court's decision. The defendant subsequently pleaded guilty to second-degree sexual abuse of a minor. However, the defendant raised new objections when the presentence report and judgment designated his crime as a crime involving domestic violence. At sentencing, the superior court left the designation in place.

The defendant appealed, arguing that the present appeal was distinguishable from the first appeal on the grounds that it involved Alaska Criminal Rule 32(e) rather than the marital privileges. Criminal Rule 32(e) requires that a written judgment must state whether an offense is a crime involving domestic violence if the prosecution claims at sentencing that the defendant was convicted of such a crime. The Court of Appeals determined that Criminal Rule 32(e) and Evidence Rule 505 rely on the same definitions. As a result, the court held that it had decided the same issue in the interlocutory review and it declined to overturn its prior decision.

Despite that, the court noted that the definition of "domestic violence" under AS 18.66.990(3) is potentially problematic. The court referenced its previous acknowledgements of the issue and reasserted that the definition "is worded so broadly that, if one were to read [it] literally, it would cover many instances where the specified relationship between the defendant and the victim is irrelevant to assessing whether the defendant is atypically dangerous or whether the defendant's conduct is atypically blameworthy." The court further asserted that courts must sometimes limit this broad definition "by the operation of other legal rules and doctrines when strict application would lead to unfair results." Because the defendant failed to identify a reason or principle that would limit the applicability of Criminal Rule 32(e), the court declined "to deviate from a literal application of the rule in this case."

Anderson v. State, 547 P.3d 1055 (Alaska App. 2024).

Legislative review is recommended if the legislature wishes to change the definition of "domestic violence" under AS 18.66.990(3).

AS 08.01.075(f)
AS 08.36.315

WHILE THE BOARD OF DENTAL EXAMINERS MUST SEEK CONSISTENCY IN DISCIPLINARY DECISIONS, THE BOARD IS AFFORDED FLEXIBILITY TO ADOPT APPROPRIATE SANCTIONS IN RESPONSE TO NOVEL FACTUAL CIRCUMSTANCES.

A dentist was convicted of dozens of crimes related to his practice. The crimes primarily involved a scheme to defraud Medicaid that seriously risked his patients' health and safety. Following the dentist's convictions, the Board of Dental Examiners adopted the decision of an administrative law judge revoking his dental license. The dentist appealed to the superior court, arguing that the board's decision was inconsistent with the board's prior decisions revoking licenses in violation of AS 08.01.075(f), which provides that a "board shall seek consistency in the application of disciplinary sanctions" and requires the board to "explain a significant departure from prior decisions involving similar facts in the order imposing the sanctions." The superior court found no comparable cases to the dentist's case and determined that the revocation was an appropriate exercise of the board's discretion, affirming the board's decision.

On appeal to the Alaska Supreme Court, the dentist argued that the board could only revoke a license under similar circumstances to previous revocations. The court disagreed, explaining that such a reading would deviate from the explicit language of the statute, which affords the board significant discretion in creating appropriate sanctions, and would render several sections of AS 08.36.315 superfluous. The court held that while the board is obligated to "seek consistency" in its disciplinary decisions, "it is not obligated to operate strictly within the bounds of existing precedent when a case presents novel circumstances." Instead, the board has "flexibility to craft appropriate sanctions in response to novel factual circumstances . . . ." Given that there were no comparable cases in the board's history, the court determined that the board's "conclusion that revocation was the 'clear and obvious sanction' given the 'sheer magnitude of admitted misconduct' was not an abuse of discretion."

Lookhart v. State, Div. of Corps., Bus., & Prof. Licensing, 548 P.3d 1094 (Alaska 2024).

Legislative review is not recommended.

AS 09.45.052(a)

AMENDMENTS TO ADVERSE POSSESSION STATUTE DID NOT ABOLISH OR ALTER THE ABILITY OF CERTAIN SUCCESSIVE ADVERSE POSSESSORS TO SATISFY THE STATUTORY PERIOD BY TACKING THEIR PERIODS OF POSSESSION TOGETHER.

After a survey revealed that a fence dividing two properties veered from the platted property line into an adjacent lot, the owners of the adjacent lot sued their neighbor for trespass and to quiet title. The neighbor raised a claim of adverse possession. Under AS 09.45.052, to acquire title to land by adverse possession due to a good faith, but mistaken, belief by the claimant that the land was within the boundaries of their property, the claimant must show that their possession of the property was open, notorious, exclusive, and hostile to the owner for a continuous period of ten years. Under common law, "[t]his ten-year period may be satisfied by successive adverse possessors, who may tack their periods of possession together if privity exists between them."

The superior court ruled in favor of the adjacent lot owner, concluding, in part, that the neighbor did not have continuous possession of the property for a ten-year period. This was due to a period of two years within the ten-year period when title to the property was conveyed to the neighbor's ex-husband as part of a divorce proceeding and the neighbor was removed temporarily from the title. In ruling for the adjacent lot owner, the superior court noted that its conclusion to exclude any periods of time when the claimant lacked a unity of possession *and* ownership of the adjacent parcel from the ten-year period was consistent with the legislative intent of the 2003 amendments to AS 09.45.052.

The Alaska Supreme Court disagreed with the superior court's interpretation of the effect of the 2003 amendments, stating that it discerned no clear intent in the text of AS 09.45.052(a) to abolish or alter the common-law tacking doctrine. The court noted that both adverse possession and the doctrine of tacking have deep roots in the common law, and statutes modifying the common law must be interpreted narrowly. The statute requires an "adverse claimant" to own "adjacent real property" for an "uninterrupted" period of ten years. The court explained the term "uninterrupted," is "a well-established element of adverse possession claims at common law" and "does not suggest tacking is impermissible." Instead, "uninterrupted" has appeared in Alaska's adverse possession statute for over a

century and has always permitted tacking. The court also reviewed the legislative history underlying the 2003 amendments and found no intent to abrogate the doctrine of tacking. While the court noted that "the amendments 'went further than any other state has gone in curtailing the application of adverse possession,' the legislature's intent appeared to have primarily been to limit the legal rights of 'bad faith squatters,' and not otherwise to modify the contours of the doctrine as applied in cases" of a good faith mistake. The court ultimately concluded "that the 2003 amendments to AS 09.45.052 did not abolish or alter the doctrine of tacking." Therefore, the court found the doctrine permitted the neighbor to establish continuous possession for the ten-year period.

Park v. Brown, 549 P.3d 934 (Alaska 2024).

Legislative review is not recommended.

AS 11.41.510(a)
AS 11.81.900(a)

A DEFENDANT MUST USE FORCE KNOWINGLY TO COMMIT THE CRIME OF ROBBERY.

A defendant attempted to run out of a liquor store without paying for a bottle of whisky he was holding, but he was twice prevented by an employee blocking the exit. Both times the defendant bounced off the employee and back into the store. The defendant was charged with robbery. Under AS 11.41.510(a)(1), a person commits the crime of second-degree robbery if, in the course of taking property from another, "the person uses . . . force upon any person with intent to. . . prevent or overcome resistance to the taking of the property or the retention of the property after taking." At trial, the defendant objected to the superior court's instructions to the jury regarding the mental state for the use-of-force element and requested that the court instead instruct the jury that the defendant's use-of-force must be intentional. The superior court rejected this request, and the jury found the defendant guilty of second-degree robbery and several other charges.

On appeal to the Alaska Court of Appeals, the defendant argued that the mental state applicable to the use-of-force element in the state's robbery statute is "intentionally," while the state argued that "knowingly" is the correct standard. The court first agreed with the parties that the use-of-force element requires some mental state. The court found this supported by both federal courts' interpretations of similar statutory

language and the text of AS 11.41.510, which requires that a person use force "with intent to" accomplish an objective, making it clear that a person's use of force must be more than accidental.

In considering what mental state should apply to the use-of-force element, the court stated that the elements of a crime in Alaska fall "into three categories: conduct, circumstances, and results." The court then explained that "knowingly" is the only mental state that may apply to conduct under Alaska law and the use of force is a conduct element. As a result, the court held that "[t]he mental state applicable to the use-of-force element is . . . 'knowingly.'" For these reasons, the court concluded that the superior court did not err when it rejected the defendant's request to instruct the jury that "intentionally" was the mental state to apply to the defendant's use of force.

Turner v. State, 552 P.3d 1077 (Alaska App. 2024).

Legislative review is not recommended.

AS 11.56.375
AS 11.56.380

TO COMMIT THE CRIME OF PROMOTING CONTRABAND, AN ARRESTEE MUST HAVE ACTUAL NOTICE THAT MAINTAINING POSSESSION OF CONTRABAND CONSTITUTES A SEPARATE CRIMINAL OFFENSE AND BE GIVEN AN OPPORTUNITY TO TERMINATE POSSESSION.

Two defendants were charged with unlawful possession of controlled substances and separately indicted on the felony crime of promoting contraband in a correctional facility after correctional officers found drugs concealed on their persons during booking. A person commits the crime of second-degree promoting contraband if the person (1) "introduces, takes, conveys, or attempts to introduce, take, or convey contraband into a correctional facility" or (2) "makes, obtains, possesses, or attempts to make, obtain, or possess anything that person knows to be contraband while under official detention within a correctional facility." When the contraband is a controlled substance, the crime is elevated to first-degree promoting contraband, a class C felony. In separate trials, the defendants each moved to dismiss the promoting contraband charges, arguing that the state had failed to establish that they acted voluntarily when they brought drugs into the correctional

facilities. One defendant had her motion granted by the superior court and the other defendant had his motion denied by a different superior court.

In the consolidated petitions for review, the parties disputed "what 'voluntary act' is required to establish criminal liability under the promoting contraband statutes for arrestees brought to a correctional facility." The defendants argued that an arrestee must take an affirmative step to hide the contraband on their person at a point when they know they are likely going to jail. Whereas the state asserted that an arrestee's failure to terminate possession of contraband, after being given an opportunity to do so, is sufficient.

The Alaska Court of Appeals agreed with a majority of courts that a person's privilege against self-incrimination is not violated by the, albeit difficult, choice to disclose possession of a controlled substance or face the legal consequences of refusal. Noting the potential unfairness of this situation, the court opined that a similar advisory to a breath test advisory may be appropriate during the booking process. However, the court refused to mandate such an advisory in this case since "the requisite awareness may be proven through other evidence, including . . . a defendant's pre- and post-arrest conduct and statements." The court instead required that, as a matter of due process, a defendant must "have notice or be otherwise aware that promoting contraband is an additional offense. . . ." The court noted that this "knowledge ensures that the defendant is making a knowing and voluntary decision" to retain drugs when given the opportunity to terminate possession.

Accordingly, the court held that "an arrestee commits the voluntary act required by the promoting contraband statute when the arrestee has actual notice or is otherwise aware that maintaining possession of contraband in the correctional facility constitutes a separate criminal offense, and, after being given the opportunity to terminate possession, continues to conceal illegal drugs." Because there was no evidence that the defendants had acted voluntarily within the meaning of the statute, the court found that the defendants' indictments should be dismissed.

Beltz v. State, 551 P.3d 583 (Alaska App. 2024).

Legislative review is not recommended.

AS 11.61.220

AN INDIVIDUAL IS ONLY REQUIRED TO INFORM A PEACE OFFICER THAT THE INDIVIDUAL POSSESSES A CONCEALED DEADLY WEAPON WHEN THE INDIVIDUAL IS INVOLVED IN AN INTERACTION WITH THE OFFICER THAT IS A FOURTH AMENDMENT SEIZURE OR IS AKIN TO A SEIZURE IN TERMS OF FORMALITY AND PURPOSE.

The defendant was helping friends remove possessions from a car that was being impounded and failed to immediately inform the peace officer at the scene that he possessed a concealed firearm on his person. He was convicted under AS 11.61.220(a)(1)(A)(i), which states that "a person commits the offense of fifth-degree weapons misconduct if the person is 21 years of age or older and knowingly possesses a deadly weapon. . . that is concealed on the person, and, when contacted by a peace officer, the person fails to immediately inform the peace officer of that possession." AS 11.61.220(i) defines "contacted by a peace officer" as "stopped, detained, questioned, or addressed in person by the peace officer for an official purpose." On appeal, the defendant argued that the interaction he had with the peace officer did not qualify as being "stopped, detained, questioned or addressed . . . for an official purpose" because he himself was not under investigation or a witness to any ongoing investigation.

The Alaska Court of Appeals first looked to the plain language of the statute and acknowledged that the definition of "contacted by a peace officer" is facially ambiguous. The court applied a rule of statutory interpretation, which requires gleaning a word's definition in a statute from the words it appears with, to determine that the legislature intended for the words "questioned" and "addressed" to have similar meanings to "stopped" and "detained." According to the court, this indicated that the terms should be construed narrowly to include only interactions that are similar to an investigative stop or seizure. The court found that this narrower interpretation was also supported by the legislative history of the statute. Specifically, the court noted that a 2003 legislative counsel memo on the definition of "contacted by a peace officer" suggested that the language was designed to apply to situations involving a Fourth Amendment seizure. Additionally, the court noted that the sponsor of the original 1994 legislation gave two examples during the committee process of when an individual would be expected to disclose a concealed weapon to a peace officer: (1) during a traffic stop or similar type of seizure; and (2) if the individual was a witness or participant in an active

police investigation. Therefore, the court found that the legislative history indicated that the term was intended to apply to "circumstances that closely resemble Fourth Amendment seizures." Finally, the court explained that construing "contacted by a peace officer" more broadly, to include all in-person contact with a peace officer, would likely give rise to constitutional notice and due process concerns and stated that the court should construe a statute in a way that does not violate the constitution if it is reasonable to do so.

For these reasons, the court held that the disclosure requirement applies to "Fourth Amendment seizures and other police-citizen encounters that closely resemble Fourth Amendment seizures in terms of formality and investigative purpose." Because the defendant was not seized, was not the target of or a witness to an investigation, and was never asked a question by the peace officer, the court determined that he was not "stopped, detained, questioned, or addressed . . . by the peace officer" and was not required to inform the officer of his concealed weapon.

Gillis v. State, 540 P.3d 1192 (Alaska App. 2023).

Legislative review is not recommended.

AS 12.55.027(d)

DEPENDING ON THE CIRCUMSTANCES, A TRIAL COURT MAY DESIGNATE GROCERY SHOPPING AS A REHABILITATIVE ACTIVITY FOR WHICH A DEFENDANT MAY LEAVE THE DEFENDANT'S HOME WITHOUT LOSING SENTENCING CREDIT FOR TIME SPENT ON ELECTRONIC MONITORING.

A defendant spent 165 days on pretrial electronic monitoring. The bail order imposing electronic monitoring allowed the defendant to leave the defendant's residence for work during specified hours, medical appointments, attorney meetings, and grocery shopping. The court included the permission to leave for grocery shopping on its own, not at the defendant's request, when it learned that the defendant lived alone and relied on food stamps.

After pleading guilty, the defendant asked for sentencing credit for the 165 days spent on pretrial electronic monitoring. Under AS 12.55.027(d), a defendant may qualify for "credit against a sentence of imprisonment for time spent on electronic monitoring" if the defendant "has not committed a criminal

offense while on electronic monitoring," and the defendant is confined to a residence. The defendant is allowed to leave the residence only for court appearances, attorney meetings, and "period[s] 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." The defendant argued that although grocery shopping is not listed in AS 12.55.027(d), it qualifies as a "rehabilitative activity." The trial court rejected the defendant's request for sentencing credit because the court concluded that, under a prior court case, grocery shopping could not qualify as a rehabilitative activity.

On appeal, the Court of Appeals disagreed. After considering the prior court case and the plain language and legislative history of AS 12.55.027(d), the court held that while grocery shopping does not always qualify as a rehabilitative activity, "trial judges have the discretion to designate it as a rehabilitative activity for a particular defendant, depending on the defendant's circumstances and the circumstances of their offense." The court explained that the term "rehabilitation" refers to preparing a defendant for, among other things, "useful employment or successful reintegration into society," and there may be circumstances "in which the trial court would consider grocery shopping to be an activity that would assist in the defendant's rehabilitation." In those circumstances, the trial court may grant sentencing credit to a defendant under AS 12.55.027(d) for time spent on electronic monitoring, even though the defendant is allowed to leave for grocery shopping. The Court of Appeals remanded the case to the trial court to determine whether grocery shopping was a rehabilitative activity under the circumstances.

Baker v. State, 538 P.3d 1023 (Alaska App. 2023).

Legislative review is recommended if the legislature wishes to exclude defendants who are allowed to go grocery shopping from being eligible for sentencing credit for time spent on electronic monitoring under AS 12.55.027(d).

AS 12.70.140
AS 12.70.150
AS 12.70.160
AS 12.70.270

UNDER THE UNIFORM CRIMINAL EXTRADITION ACT, A FUGITIVE MAY ONLY BE DETAINED FOR A SINGLE PERIOD OF UP TO NINETY DAYS, INCLUDING BOTH INCARCERATION AND RELEASE ON BAIL, WHILE AWAITING ANOTHER STATE'S GOVERNOR'S WARRANT FOR EXTRADITION.

A person was arrested and charged with being a fugitive based on information that he committed a crime in Washington State. The case was dismissed 91 days later because Washington did not obtain a governor's warrant for extradition. Over a year after the person was released, Alaska authorities again arrested and charged him with being a fugitive based on the same information about the crime in Washington. The fugitive challenged the second arrest and detention, arguing that AS 12.70.140 – 12.70.160, provisions in the Uniform Criminal Extradition Act (UCEA), limit detention prior to obtaining a governor's warrant to a single 90-day period. The district court rejected this argument and held that the first case had no bearing on whether he could be detained again in the second case, even though the second case was based on the same information as the first case.

On appeal, the Alaska Court of Appeals reversed. The court explained that AS 12.70.140 permits detention of a fugitive "for not more than 30 days," and AS 12.70.160 allows "for a further period of not more than 60 days" of detention pending service of a governor's warrant from another state. The court also noted that AS 12.70.150 requires a fugitive to "be released on bail during this period unless the underlying crime of extradition is a capital offense." When interpreting the UCEA, AS 12.70.270 requires that its provisions be "construed as to effectuate the general purposes to make uniform the law of those states that enact it." Considering the plain language and legislative history of the UCEA and its interpretation in other states, the court held that a fugitive may be detained while awaiting service of a governor's warrant for a single period of up to 90 days, and that this detention period includes "both incarceration and constraint on bail." The court noted that these holdings align with the approach taken by almost all other UCEA jurisdictions that have considered these issues.

Ives v. State, 536 P.3d 757 (Alaska App. 2023).

Legislative review is not recommended.

AS 13.06.068
AS 13.12.301

WHEN A TESTATOR NOT DOMICILED IN ALASKA AT DEATH ELECTS IN THEIR WILL TO HAVE ALASKA LAW GOVERN THE DISPOSITION OF THEIR ALASKA PROPERTY, THE TESTATOR ALSO AGREES TO HAVE ALASKA'S AFTER-MARRIED SPOUSE STATUTE APPLY IF THE TESTATOR SUBSEQUENTLY MARRIES.

Prior to his death, a decedent made a will devising property to his ex-wife and a foundation. The will elected to use the Uniform Probate Code, as codified and amended by Alaska statute. The decedent remarried his ex-wife the day before he died. After his death, his widow filed a demand taking the position that she was an after-married spouse "entitled to [the decedent's] entire estate under the provisions of AS 13.12.301." The foundation opposed the petition, arguing that AS 13.06.068(b) required the court to apply the law of Washington, the decedent's domicile state at death. AS 13.06.068(b) establishes the general choice-of-law rule requiring that the provisions of a will "are determined by the law of the jurisdiction in which the decedent was domiciled at death." The widow responded that she was entitled to inherit as an after-married spouse under the exception to the general choice-of-law rule provided in AS 13.06.068(i). That statute allows "the intrinsic validity, including the testator's general capacity, effect, interpretation, revocation, or alteration of [a] provision" of a will to be determined by Alaska law when the testator elects for it in the will, is not domiciled in Alaska at the time of death, and the personal property being disposed of is in Alaska. The superior court, finding that "Alaska law would govern the 'intrinsic validity' of the will and Washington law would govern the 'formal validity,'" ruled that the rights of an after-married spouse were a matter of "formal validity" governed by Washington. The widow appealed.

On appeal, the Alaska Supreme Court determined that whether the after-married spouse issue was a matter of "intrinsic validity" was not dispositive because AS 13.06.068(i) also allows a testator to elect for Alaska law to govern the "effect, interpretation, revocation, or alteration" of the provisions of a will. The court found that "AS 13.12.301 creates a rule for interpreting the will's disposition of property when the testator later remarries" and "does not take the testator's property entirely outside the will" as alleged by the foundation. The court also pointed to committee hearing minutes as evidence that it is "likely the legislature intended to allow testators to choose Alaska law to determine how to carry out their wills if

they later marry." The court found that this reading of AS 13.12.301 was supported by New York case law on a similar statute.

Because the court found that AS 13.12.301 pertains to the "effect" and "interpretation" of a will, the court held that Alaska law governs the after-married spouse issue if the decedent elected for Alaska law to apply in their will. As a result, the court reversed the superior court's decision to apply Washington law and remanded the case.

Matter of Est. of Bentley, 556 P.3d 244 (Alaska 2024).

Legislative review is not recommended unless the legislature wishes to prohibit Alaska's after-married spouse statute from applying to testators who are not domiciled in Alaska at death.

AS 13.16.460
AS 47.07.055(e)

BECAUSE MEDICAID ESTATE RECOVERY CLAIMS ARISE BEFORE THE DEATH OF THE RECIPIENT, THE CLAIMS MUST BE FILED WITHIN FOUR MONTHS AFTER NOTICE TO CREDITORS.

Two recipients of Medicaid services passed away. An informal probate case was opened for each of them. The personal representative of each case issued a notice to creditors. Within four months of the notice, but over four months after each recipient's death, the state filed a Medicaid estate recovery claim under AS 47.07.055(e). AS 47.07.055(e) prohibits the state from making a claim for reimbursement for Medicaid payments until the death of the recipient. Each estate disallowed the claim made to it and the state then petitioned the superior court to permit those claims. Both estates argued that the claim was untimely because the claim arose at the recipient's death and a claim arising at death must be filed within four months of death under AS 13.16.460(b). The state countered that each claim arose before the recipient's death and a claim arising before death must be filed within four months of notice to creditors under AS 13.16.460(a)(1). The superior court held in favor of the estate in one case and the state in the other.

On appeal, the Alaska Supreme Court consolidated both cases. The court held that a Medicaid estate recovery claim under AS 47.07.055(e) arises "before death," not "at or after death," for the purposes of determining the claim filing deadline under

AS 13.16.460. The court found that this conclusion was supported by the text of AS 13.16.460, which provides that a claim may arise whether it is "due or to become due" or "absolute or contingent," suggesting that a claim may arise before it becomes enforceable. The court also noted that the probate code's definition of "claim," certain secondary sources, and cases from other jurisdictions supported this conclusion. The court next found that classifying Medicaid estate recovery claims as arising at or after death would be contrary to the legislature's decision to give Medicaid claims priority, noting that in many cases it would not expediate estate administration, but would instead subject the state to additional costs and risks not faced by other creditors. For these reasons, the court held that "Medicaid estate recovery claims arise before the death of a recipient and therefore must be filed within four months after notice to creditors."

Matter of Est. of Abad, 540 P.3d 244 (Alaska 2023).

Legislative review is not recommended.

AS 14.03.016

PARENTS MUST BE NOTIFIED AT LEAST TWO WEEKS BEFORE PUBLIC SCHOOL STUDENTS ARE TAUGHT ABOUT GENDER IDENTITY.

The attorney general advised the commissioner of education that AS 14.03.016(a)(3) requires parental notification before students are taught about gender identity. AS 14.03.016(a)(3) provides, in relevant part, that school boards must have procedures for notifying parents "not less than two weeks before any activity, class, or program that includes content involving human reproduction or sexual matters is provided to a child." Under AS 14.03.016(d)(2), the term "'human reproduction or sexual matters' does not include curricula or materials for (A) sexual abuse and sexual assault awareness and prevention training required under AS 14.30.355; or (B) dating violence and abuse awareness and prevention training required under AS 14.30.356."

The attorney general first defined "gender identity" as "a person's innate sense of their gender," noting that "[i]t is typically used 'in contexts where [gender identity] is contrasted with the sex registered. . . at birth'" and that "a person's sex 'is typically assigned at birth based on an infant's external genitalia.'" The attorney general opined that the phrase "content involving human reproduction or sexual matters" is

broad and includes any topic that involves human genitalia and reproductive organs. The attorney general therefore determined that gender identity falls within the plain language of the statute since it relates to a person's "sex assigned at birth, which is inextricably tied to [the] person's 'external genitalia.'" The attorney general next noted that the legislature explicitly excluded several training programs from the definition of "human reproduction or sexual matters," and opined that the legislature could have explicitly excluded "gender identity" from the definition if the legislature intended that result. The attorney general then asserted that interpreting AS 14.03.016 broadly to include gender identity was also supported by the purpose of that statute and other related statutes, to "maximize parents' ability to participate in their child's education. . . ."

Finding no meaningful contrary legislative history, the attorney general concluded that "human reproduction or sexual matters" as used in AS 14.03.016 includes the concept of gender identity. Therefore, the attorney general advised that public schools must give parents at least two weeks notice before students may be taught about gender identity.

2023 Op. Alaska Att'y Gen. (Nov. 16).

Legislative review is recommended if the legislature wishes to exclude gender identity coursework from the parental notification requirement.

AS 34.03.090
AS 34.03.100
AS 34.03.170
AS 34.03.210

CABLE AND INTERNET ARE NOT ESSENTIAL SERVICES FOR WHICH A TENANT MAY RECOVER DAMAGES UNDER AS 34.03.210; A LANDLORD IS SUBJECT TO DAMAGES FOR FAILURE TO DELIVER POSSESSION OF PREMISES WHEN THERE ARE HABITABILITY VIOLATIONS WHICH MATERIALLY AFFECT HEALTH OR SAFETY, THE VIOLATIONS ARE UNKNOWN TO THE TENANT UPON ENTRY AND DISCOVERED BY THE TENANT WITHIN A REASONABLE TIME, AND THE LANDLORD IS PROVIDED REASONABLY CONTEMPORANEOUS WRITTEN NOTICE.

Tenants complained to their landlord about the habitability of their rental unit approximately five months after the beginning of their lease and several months after discovering the habitability issues. After the landlord failed to address the

issues, the tenants withheld rent and asked the landlord to reimburse their additional utilities costs, including cable and internet. The landlord instead evicted the tenants and filed a complaint seeking unpaid rent and compensation for damaged property. The tenants counterclaimed, asserting the landlord violated multiple provisions of the Uniform Residential Landlord and Tenant Act (URLTA). Among the claims, the tenants sought to recover damages from the landlord for diminishing the tenant's essential services under AS 34.03.210 and failure to deliver possession under AS 34.03.170. The superior court found in favor of the tenants on these issues.

On appeal, the Alaska Supreme Court held that the landlord willfully diminished the tenants' essential services. However, the court also clarified that, while the tenants could recover for the loss of their cable and internet services on other grounds, cable and internet do not qualify as essential services under AS 34.03.210. Regarding the failure to deliver possession, the court considered "AS 34.03.170 in harmony with URLTA as a whole, including URLTA's purpose and precedent, legislative intent," and various other legal authorities to determine whether damages may be awarded to a tenant who takes possession of premises that are not habitable. The court concluded that while "a tenant's entry onto the premises ordinarily constitutes delivery of possession of the premises under AS 34.03.090," a landlord "does not deliver possession when there are habitability violations under AS 34.03.100 that materially affect health or safety and: (1) such violations are existing but unknown to the tenant upon entry; (2) they are discovered by the tenant within a reasonable time after entry; and (3) the tenant provides written notice of the violations to the landlord that is reasonably contemporaneous with discovery of the violations." Although the court ultimately determined that damages could be awarded under AS 34.03.170 for failure to deliver habitable premises, the tenants in this case were not entitled to damages under AS 34.03.170 because they did not report the issues to the landlord in writing in a period reasonably contemporaneous with the discovery of the violations.

Dinh v. Raines, 544 P.3d 1156 (Alaska 2024).

Legislative review is not recommended.

AS 43.05.260

THE DEPARTMENT OF REVENUE MAY NOT ASSESS AND A MUNICIPALITY MAY NOT COLLECT TAXES ON OIL AND GAS PROPERTY MORE THAN THREE YEARS AFTER A TAX RETURN IS FILED EVEN IF THE MUNICIPALITY SUCCESSFULLY APPEALS A DETERMINATION THAT THE PROPERTY IS NOT TAXABLE.

Under Alaska law, both the state and municipalities may tax property used for the pipeline transportation or production of gas or unrefined oil. While the Department of Revenue "has the exclusive authority to determine what property is taxable and to determine its value for tax purposes," a municipality can appeal these determinations. The City of Valdez appealed the department's determination that certain property was not taxable and prevailed after nearly two decades of proceedings. However, the city was unable to collect taxes on property that should have been taxed during most of this period. Under AS 43.05.260(a), "the amount of a tax imposed by" AS 43 "must be assessed within three years after the return was filed." The superior court held that even though the department wrongly determined the status of the taxable property, the three-year limit on assessing taxes applied. The city appealed.

On appeal, the Alaska Supreme Court first found that under the plain meaning of AS 43.05.260 "the limitations period . . . applies to all types of tax assessments, except those expressly exempted." The court reasoned that the existence of other exceptions to AS 43.05.260 in statute creates an inference that the legislature did not intend for other exceptions. The court also determined that the legislative history of AS 43.05.260 supported uniform implementation of the time limit. For these reasons, the court held that the statute of limitations clearly applies to oil and gas property taxes.

The court also determined that no implicit exceptions exist for municipal taxability appeals. First, the court found that, to the extent precedent allowed for a timely assessment of tax to be revised beyond the three-year deadline, "this case does not fall within that rule" because no tax was ever assessed. The court stated that allowing such an exception under these circumstances "lacks a basis in text" and "is contrary to the statute's underlying policy." The court also explained that applying the statute of limitations would not necessarily negate the municipality's right to appeal the department's determinations because it is possible for the process to take less than three years given the options that exist for expedited

review. Last, the court found that AS 43.05.260 does not need to be interpreted to put municipalities and taxpayers on an equal plane because municipalities have significant advantages not available to taxpayers. As a result, the court held that even when the department "wrongly determined certain property was not taxable, AS 43.05.260 bars [the department] from assessing tax on the property more than three years after the tax return was filed."

City of Valdez v. Prince William Sound Oil Spill Response Corp., 548 P.3d 616 (Alaska 2024), *reh'g denied* (May 23, 2024).

Legislative review is not recommended unless the legislature wishes to exempt successful municipal oil and gas property taxability appeals from the three-year statute of limitations.

AS 44.41.035(i)

DISTRICT COURT HAS JURISDICTION TO ISSUE THE ORDER REQUIRED FOR EXPUNGEMENT OF A PERSON'S DNA SAMPLE.

The defendant was arrested and charged with fourth-degree assault and fourth-degree criminal mischief. AS 44.41.035 requires that the Department of Public Safety (DPS) collect DNA samples from people arrested for "a crime against a person." Fourth-degree assault qualifies as "a crime against person" under AS 44.41.035(s)(2). However, DPS is required by AS 44.41.035(i) to destroy that material upon receiving a request accompanied by a certified copy of a court order making certain findings required under that subsection, including, in relevant part, that "the criminal complaint, indictment, presentment, or information for the offense for which the person was arrested was dismissed, and a criminal complaint, indictment, presentment, or information for an offense requiring submission of a DNA sample was not refiled[.]"

Pursuant to a plea agreement, the state dismissed the criminal mischief charge, the state amended the assault charge to a disorderly conduct charge, and the defendant pleaded guilty to the disorderly conduct charge. After sentencing, the defendant requested an order establishing that the "crime against a person" had been dismissed. The district court denied the motion and the defendant appealed.

The state argued on appeal that the district court lacked

jurisdiction to issue the order for injunctive relief required under AS 44.41.035(i). The Court of Appeals disagreed with the state for two reasons. First, the court found that AS 44.41.035(i) does not require a court to order DPS to take any action. Rather, AS 44.41.035(i) requires the court to issue findings describing the results of a criminal proceeding it conducted and DPS to destroy the materials upon receipt of an order containing such findings. Second, the court determined that the legislative history of AS 44.41.035(i) established that the legislature expected that the findings required by the statute "would be made by the court with jurisdiction over the defendant's criminal case." For these reasons, the court held that the district court has jurisdiction to issue findings under AS 44.41.035(i) and reversed the district court's denial of the defendant's request for a court order under AS 44.41.035(i).

Hillyer v. State, 537 P.3d 785 (Alaska App. 2023).

Legislative review is not recommended.

AS 47.10.011(6)
AS 47.10.011(8)(B)

TO FIND A CHILD IN NEED OF AID UNDER AS 47.10.011(6) AND (8)(B)(ii), THERE MUST BE AN ACTUAL AND SIGNIFICANT THREAT THAT THE CHILD WILL SUFFER PHYSICAL HARM OR MENTAL INJURY, BUT THE THREAT NEED NOT BE PROBABLE OR IMMINENT; A CHILD MUST ACTUALLY HAVE BEEN EXPOSED TO DOMESTIC VIOLENCE TO BE FOUND A CHILD IN NEED OF AID UNDER AS 47.10.011(8)(B)(ii).

The Office of Children's Services (OCS) took emergency custody of a child. At the probable cause hearing, OCS argued in part that the child was a child in need of aid under AS 47.10.011(6) and (8)(B)(ii). These provisions respectively allow a child to be declared a child in need of aid if conduct or conditions created by a parent place the child at a substantial risk of suffering (1) substantial physical harm; or (2) substantial mental injury as a result of exposure to domestic violence. The superior court did not find probable cause that the child was a child in need of aid and ordered OCS to return the child to her parents. OCS appealed.

The Alaska Supreme Court first considered the meaning of the term "substantial risk" of physical harm or mental injury as used in AS 47.10.011(6) and (8)(B). The court found that the definitions of "substantial harm" in legal commentaries and other states and the legislative history of the statute suggested that the harm must

be more than a mere or remote possibility, but need not be imminent. The court therefore concluded that "substantial risk" for the purposes of AS 47.10.011 "refers to a threat of 'substantial physical harm' or 'mental injury' . . . that is actual, significant, and more than a mere possibility, but . . . need not be probable nor imminent."

Next, considering the meaning of "exposure to conduct" in AS 47.10.011(8)(B)(ii), the court looked to "the plain meaning of subsection (8)(B)(ii), its broader statutory context and contrasting language in (8)(B)(i), (ii), and (iii), and . . . existing case law." The court disagreed with OCS that the statute is satisfied upon a showing that the child is likely to be exposed to domestic violence. Instead, the court held that AS 47.10.011(8)(B)(ii) applies when a child is directly exposed to domestic violence, such as seeing, hearing, or otherwise directly perceiving the violence.

Because there was no evidence that the child had been exposed to domestic violence, the court affirmed the superior court's ruling under AS 47.10.011(8)(B)(ii). However, finding sufficient evidence to establish probable cause under AS 47.10.011(6) and (8)(B)(i), the court reversed the superior court on these grounds.

Dep't of Fam. & Cmty. Servs., Off. of Children's Servs. v. Karlie T., 538 P.3d 723 (Alaska 2023).

Legislative review is not recommended.

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