



STATE OF ALASKA
Legislative Affairs Agency

A
REPORT TO THE
THIRTY-FOURTH 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
Legal Services
Division of Legal and Research Services
Legislative Affairs Agency
State Capitol
Juneau, Alaska 99801-1182

A REPORT TO THE THIRTY-FOURTH 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The report lists Alaska Statutes that will be amended or repealed between February 28, 2026, and March 1, 2027, according to laws enacted before the 2026 legislative session.

The report also examines published cases construing Alaska Statutes that were decided by the courts and reported between October 1, 2024, and September 30, 2025,

and

Opinions of the Attorney General that were made available through Internet distribution between October 1, 2024, and September 30, 2025.

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December 2025

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 2026 Legislature, will be repealed or amended before March 1, 2027, 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, 2026, and March 1, 2027,
according to laws enacted before the 2026 legislative session

Laws enacted in 2022

Ch. 31, SLA 2022, sec. 8 – Fisheries product development tax credit

AS 40.25.100(a)	Amended January 1, 2027
AS 43.05.230(m)	Repealed January 1, 2027
AS 43.75.037	Repealed January 1, 2027
AS 43.75.130(g)	Repealed January 1, 2027

Laws enacted in 2024

Ch. 39, SLA 2024, sec. 11 - Insurance data information security programs

AS 21.23.260(c)(7)	Enacted January 1, 2027
AS 21.23.260(c)(8)	Enacted January 1, 2027

Ch. 47, SLA 2024, sec. 7 - Opioid overdose drug report

AS 17.20.085(d)	Repealed January 1, 2027
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Ch. 58, SLA 2024, sec. 3 - University of Alaska course materials

AS 14.40.112	Enacted July 1, 2026
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Laws enacted in 2025

Ch. 5, SLA 2025, sec. 21 - Maximum classroom size

AS 14.03.065	Enacted July 1, 2026
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Ch. 21, SLA 2025, sec. 6 - Prior authorizations for medical care

AS 21.07.080	Amended January 1, 2027
AS 21.07.100	Enacted January 1, 2027
AS 21.07.110	Enacted January 1, 2027
AS 21.07.120	Enacted January 1, 2027
AS 21.07.130	Enacted January 1, 2027
AS 21.07.140	Enacted January 1, 2027
AS 21.07.150	Enacted January 1, 2027
AS 21.07.160	Enacted January 1, 2027
AS 21.07.170	Enacted January 1, 2027
AS 21.07.180	Enacted January 1, 2027
AS 21.07.250(1)	Enacted January 1, 2027
AS 21.07.250(2)	Enacted January 1, 2027
AS 21.07.250(5)	Enacted January 1, 2027
AS 21.07.250(12)	Enacted January 1, 2027
AS 21.07.250(15)	Enacted January 1, 2027
AS 21.07.250(16)	Enacted January 1, 2027
AS 21.07.250(18)	Enacted January 1, 2027

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. 11,
Constitution of the
State of Alaska
AS 12.30.011(b)
AS 12.30.011(d)(2)

WHEN DETERMINING CONDITIONS FOR PRETRIAL RELEASE, THE STATUTORY PRESUMPTION THAT PERSONS CHARGED WITH CERTAIN OFFENSES POSE AN ELEVATED APPEARANCE AND PERFORMANCE RISK IS CONSTITUTIONAL.

A defendant was indicted on counts of first-degree sexual abuse of a minor and third-degree fear assault. When a court is determining conditions of pretrial release, there is a rebuttable presumption that a defendant charged with certain offenses, including unclassified or sexual felonies, is a substantial appearance risk and poses a danger to the victim, other persons, or the community under AS 12.30.011(d)(2). Following the initial bail order and several bail review hearings, the superior court determined that the defendant overcame the rebuttable presumption that he was a substantial appearance risk. However, the defendant had not overcome the presumption that he posed a danger to the community. The superior court resultingly imposed a \$25,000 cash appearance bond on the defendant and required him to enter a treatment program, submit to electric monitoring, and remain on house arrest at the treatment program with limited passes. The defendant appealed arguing, in part, that the rebuttable presumption was unconstitutional.

On appeal, the Alaska Court of Appeals held that the statutory presumption that persons charged with certain offenses pose an elevated appearance and performance risks is constitutional. The court began by reviewing its precedent establishing that no bail orders violate art. I, sec. 11, Constitution of the State of Alaska, and that former AS 12.30.011(d)(2) was unconstitutional because it prompted the court to refrain from setting bail. The court clarified that current AS 12.30.011(d)(2), as amended by the legislature, does not violate that constitutional provision because it only "directs the court to make a 'finding' that the defendant poses a 'substantial risk' of nonappearance and a danger to the victim or community." The court explained that, if the presumption under AS 12.30.011(d)(2) is not rebutted, courts are still required to impose release conditions under AS 12.30.011(b).

which "requires some conditions be imposed but does not direct the court to impose any condition in particular." In support of this interpretation, the court pointed to testimony from the Department of Law and a memorandum by the Attorney General's office in the legislative history of the amended statute. The court, however, vacated the bail order and remanded this case to the superior court on other grounds related to the amount of the cash appearance bond required by the superior court.

Moe v. State, 570 P.3d 925 (Alaska App. 2025).

Legislative review is not recommended.

Art. I, sec. 15,
Constitution of the
State of Alaska
AS 12.55.165
AS 12.55.175(f)

A SUBSTANTIVE CHANGE TO A STATUTE CANNOT RETROACTIVELY OVERRULE A PRIOR BINDING JUDICIAL INTERPRETATION OF THE STATUTE IN A PARTICULAR CASE.

In 2009 a man was convicted of sexual assault and sentenced within the presumptive sentencing range by the superior court. The man requested a referral to a three-judge sentencing panel under AS 12.55.165 that could reduce his sentence below the presumptive range. The court denied the man's request.

On appeal, the Alaska Court of Appeals affirmed the man's conviction but not his sentence. The court of appeals identified two non-statutory mitigating factors that could form the basis for a referral to the three-judge panel and remanded the case back to the superior court to consider those factors. In 2013, the legislature enacted legislation that retroactively amended the governing statutes for three-judge panel referrals to specifically reject the two factors identified by the court of appeals.

On remand, the superior court applied the 2013 amended statutes and again denied the man's request to refer his sentence to a three-judge panel. The man appealed, arguing the constitutional prohibition on ex post facto laws required the courts to apply the law from the first court of appeals decision. The court of appeals concluded that the 2013 legislation clarified preexisting law rather than changing it, so the 2013 amended statutes could retroactively be applied to the man's case without violating the prohibition on ex post facto laws.

The supreme court reversed the court of appeals. The supreme court first held, based on existing precedent, that a legislature's

interpretation of a statute enacted by a prior legislature is not conclusive as to the prior legislature's intent or the meaning of the statute. The supreme court then explained that the binding precedent from the first decision issued by the court of appeals, which interpreted AS 12.55.165 to include the two additional factors, was the law at the time that the 2013 legislation was enacted. Therefore, the supreme court concluded that the 2013 amendments did change the law, as opposed to clarifying it. However, the supreme court noted that the changes made by the 2013 legislation could still apply to the man's case without violating the constitutional prohibition on ex post facto laws if they were procedural, as opposed to substantive. The supreme court thus remanded the case to the court of appeals to make that determination.

Collins v. State, 568 P.3d 349 (Alaska 2025).

Legislative review is not recommended.

Art. IV, sec. 8,
Constitution of the
State of Alaska;
Alaska Judicial
Council Bylaws, art. II,
sec. 3

THE ALASKA JUDICIAL COUNCIL MAY NOT DETERMINE WHETHER A PERSON APPOINTED TO THE COUNCIL IS QUALIFIED TO SERVE ON THE COUNCIL.

The attorney general advised the governor that it is unconstitutional for the Alaska Judicial Council to determine whether a person appointed to the council is qualified to serve on the council. Specifically, the attorney general opined that art. II, sec. 3 of the Alaska Judicial Council bylaws, which states "[t]he chair of the Council shall administer the oath of office to each new member, following a determination by the Council that the person selected has met the qualifications for membership as set forth by law," violates the appointment process established under art. IV, sec. 8, Constitution of the State of Alaska, and the separation of powers doctrine.

The attorney general first looked to the text of art. IV, sec. 8 of the state constitution, which governs the process of appointing members of the judicial council. The constitution provides that the three attorney members are appointed by the Alaska Bar Association and the three non-attorney members are appointed by the governor and confirmed by the legislature. The attorney general noted that the language in the bylaw could be used by the council to reject an appointee. The attorney general concluded that this would run contrary to the constitution because the plain text of the constitution does not grant the

judicial council a role in determining the qualifications of its members. Furthermore, the attorney general contrasted the language in art. IV, sec. 8, with that in art. II, sec. 12 of the state constitution, which explicitly provides that the senate and house of representatives are "the judge of the election and qualifications of its members." The attorney general expressed that the framers of the constitution could have added similar language for the judicial council if they had intended such an outcome. The attorney general also looked to the minutes of the constitutional convention addressing the appointment process and concluded that the framers did not intend to allow the council to determine the qualifications of appointees.

The attorney general further opined that the bylaw violates the separation of powers doctrine. Specifically, the attorney general expressed that if this provision was used to reject a member to the council, it would usurp the governor's power to appoint non-attorneys to the council, including the governor's authority to make recess appointments, and the legislature's powers of confirmation and lawmaking. For these reasons, the attorney general concluded that the bylaw is unconstitutional.

2025 Op. Alaska Att'y Gen. (Aug. 28).

Legislative review is not recommended.

Art. VII, sec. 1,
Constitution of the
State of Alaska
AS 14.03.300
AS 14.03.310

**STATUTES AUTHORIZING STATE-FUNDED
ALLOTMENTS TO PUBLIC CORRESPONDENCE
SCHOOL STUDENTS ARE NOT FACIALLY
UNCONSTITUTIONAL.**

A group of parents of children enrolled in neighborhood public schools sued the state alleging that some students were using correspondence allotment funds in violation of art. VII, sec. 1, of the Alaska Constitution, which prohibits using "public funds for the direct benefit of any religious or other private educational institution." Under the correspondence statutes, AS 14.03.300 and 14.03.310, school districts must provide correspondence students with an individual learning plan that meets certain requirements and may provide correspondence students with allotments. These allotments may be used to "purchase nonsectarian services and materials from a public, private, or religious organization." The lawsuit alleged that the correspondence statutes were facially unconstitutional because the purpose of the statutes was to allow public funds to be used to pay private school tuition. The trial court agreed and struck down AS 14.03.300 and 14.03.310 as facially unconstitutional.

On appeal, the Alaska Supreme Court, after considering the plain language of and the constitutional convention minutes for art. VII, sec. 1, found that the statutes provide a substantial number of ways in which allotment funds may be used "that do not entail unconstitutional direct benefits to religious or private educational institutions." The court explained that even if a constitutionally suspect legislative purpose in enacting the correspondence statutes existed, it would not negate the constitutional uses of the allotment funds. The court also found that statutory limits on the oversight of the Department of Education and Early Development over correspondence students is not a sufficient basis to find the correspondence statutes unconstitutional. Because the statutes have a plainly legitimate sweep, the court held that they are not facially unconstitutional.

The court declined to decide whether using allotment funds to pay private school tuition is unconstitutional because the court determined that it was not clear from the record whether the challenged statutes actually allow allotment funds to pay for private school tuition. The court also determined that proper relief could not be granted unless a school district that has authorized the allegedly unconstitutional funding is made a party to the litigation. The court remanded the case back to the trial court for further proceedings consistent with this decision.

Dep't of Educ. & Early Dev. v. Alexander, 566 P.3d 268 (Alaska 2025).

Legislative review is not recommended.

Alaska Rule of
Professional
Conduct 1.7(a)(2)
AS 44.21.410(a)(4)

THE OFFICE OF PUBLIC ADVOCACY IS REQUIRED TO PROVIDE LEGAL REPRESENTATION TO AN INDIGENT PERSON IF THE PUBLIC DEFENDER AGENCY HAS ANY CONFLICT OF INTERESTS, INCLUDING LACK OF CAPACITY.

The superior court appointed the Office of Public Advocacy (OPA) to represent a client of the Public Defender Agency (Agency) based on a finding that the Agency lacked capacity to represent the client following the unanticipated resignation of an assistant public defender. The superior court determined that the Agency's lack of capacity created a conflict of interests under Alaska Rule of Professional Conduct 1.7(a)(2) and transferred the case to OPA under AS 44.21.410(a)(4), which requires OPA to represent "indigent persons who are entitled

to representation [under the Agency's authorizing statute] and who cannot be represented by the [Agency] because of a conflict of interests." OPA moved to vacate its appointment and the court denied the motion.

On appeal, the Alaska Supreme Court held that OPA was required to continue to represent the client. In support of its holding, the court first explained that it was not a separation of powers violation for the superior court to intervene in the Agency's representation of the client. The superior court had an affirmative duty to intervene when it became apparent to the court that a defendant was not receiving effective representation.

Next, the Alaska Supreme Court explained that lack of capacity by the Agency can be a disqualifying conflict of interest under the Alaska Rules of Professional Conduct because the Agency attorneys are unable to provide effective representation to all of their clients. The court determined that AS 44.21.410(a)(4) applies to all conflicts of interests of the Agency, including those due to a lack of capacity, and is not limited to "actual" conflicts of interests, such as codefendant representation. Because the term "conflict of interest" is not defined in statute, the court looked to other definitions of the term and determined that the term does not exclude particular types of conflicts of interests. The court found that this interpretation was supported by the legislative history surrounding the establishment of OPA, which primarily focused on the "fiscal benefits of creating an agency to handle cases where the Agency had a conflict, not what constituted a conflict." While OPA argued that it had historically understood "conflicts" as only meaning "actual conflicts," the court concluded that OPA's historical practice could not overcome the plain language of the statute and the applicable legislative history.

Off. of Pub. Advoc. v. Super. Ct., First Jud. Dist., 566 P.3d 235 (Alaska 2025).

Legislative review is not recommended unless the legislature wishes to limit the types of Agency conflicts of interests that require OPA appointment.

AS 04.11.411
AS 04.11.499(a)
AS 04.16.220

MANDATORY FORFEITURE OF AN AIRCRAFT USED TO ILLEGALLY TRANSPORT ALCOHOL TO A DRY COMMUNITY IS PUNITIVE BUT, UNDER THE CIRCUMSTANCES, NOT AN UNCONSTITUTIONALLY EXCESSIVE FINE.

The owner of an airplane that he operated on behalf of his air taxi company attempted to use the airplane to transport alcohol into a dry community. A dry community is a municipality that has adopted a "local option" under AS 04.11.491 to prohibit the importation, sale, and possession of alcohol. Under AS 04.11.499(a), a person generally "may not knowingly send, transport, or bring an alcoholic beverage into" a dry community. The owner and the air taxi company were convicted of violating this statute.

Under AS 04.16.220, a court must order forfeiture of an aircraft used to transport alcohol into a dry community in violation of AS 04.11.499(a) upon conviction unless certain criteria are met. None of the criteria to avoid the mandatory forfeiture were met, but the superior court still declined to order forfeiture. On remand by the Alaska Court of Appeals, the superior court again declined to order forfeiture of the airplane, this time because it determined that, under the circumstances, forfeiture would be an excessive fine under the Eighth Amendment of the United States Constitution.

On appeal, the Alaska Supreme Court first determined that the Eighth Amendment applied because the legislature intended the forfeiture to be punitive, and it thus constituted a "fine." The supreme court then concluded that the forfeiture was not an unconstitutionally excessive fine because it was not "grossly disproportional to the gravity of the offense." Therefore, the supreme court held that the mandatory forfeiture statute was not unconstitutional under the Eighth Amendment.

Jouppi v. State, 566 P.3d 943 (Alaska 2025).

Legislative review is not recommended.

AS 08.01.075(f)

A PROFESSIONAL LICENSING BOARD IS ONLY REQUIRED TO SEEK CONSISTENCY WITH ITS OWN PRIOR DISCIPLINARY DECISIONS, NOT THOSE OF OTHER PROFESSIONAL LICENSING BOARDS.

The Board of Chiropractic Examiners found that a chiropractor had violated professional standards by committing lewd or immoral conduct with a patient, practicing while unfit, refusing to comply with a health mandate, and being convicted of crimes demonstrating unfitness for practice. The board revoked his license to practice, a sanction it had never imposed before.

The superior court reversed the board's decision, finding it had violated its statutory duty under AS 08.01.075(f), which provides that a "board shall seek consistency in the application of disciplinary sanctions," when it did not consider disciplinary decisions by other professional licensing boards in Alaska and other jurisdictions.

On appeal, the Alaska Supreme Court noted that the text of AS 08.01.075(f) does not expressly say that each board must consider the disciplinary decisions of other boards and reasoned that "had the legislature intended such a rigid requirement, it would likely have said so directly." The court further explained that "[r]equiring the licensing board for one profession to seek consistency with the disciplinary decisions of other licensing boards would" hinder "each body from responding appropriately to the distinct standards of its own profession." Accordingly, the court reversed the superior court decision, holding that the board's statutory mandate to seek consistency with prior rulings did not require it to seek consistency with the rulings of licensing boards for different professions.

State v. Shoemaker, 576 P.3d 80 (Alaska 2025).

Legislative review is not recommended.

AS 09.17.010(b)
AS 09.17.080

STATUTORY LIMITS ON NONECONOMIC DAMAGES ARE APPLIED AFTER THE APPLICATION OF APPORTIONMENT-OF-FAULT PERCENTAGES.

The plaintiff sued the defendant for negligence after he was injured while helping the defendant install a crucifix. At trial, the jury awarded the plaintiff \$1.2 million for noneconomic loss but found that he was 75% at fault for the accident and the defendant was only 25% at fault. The superior court held that the plaintiff was entitled to a recovery of \$300,000 because the amount of damages allocated to each party at fault should first be determined under AS 09.17.080 before applying the \$400,000 noneconomic limit on damages under AS 09.17.010(b). On appeal, the defendant argued that the court should have applied the damages cap first and limited the award to \$100,000.

The Alaska Supreme Court agreed with the superior court regarding the sequencing of AS 09.17.010(b) and 09.17.080. The court explained that AS 09.17.080(a) requires, and Alaska's Civil Pattern Jury Instructions reflect, that the jury answers the amount of damages caused by the negligence of the defendant and the plaintiff, while AS 09.17.080(c) provides that the calculation of the actual award is left to post-judgment motions and court order. While the court acknowledged that AS 09.17.010 established a general legislative intent to reduce awards of damages across the board, the court determined that there was no statutory language or clear legislative intent to suggest that the statute is meant to place a dollar value on personal injuries that then requires further reduction below the cap. The court acknowledged that this sequencing has a possibility of causing inconsistent results between plaintiffs but explained that "any resulting injustice is slight in comparison to the injustice of further reducing a recovery that is already capped at an amount less than the loss actually suffered. And some degree of inconsistency is an inevitable consequence of statutory damages caps." The court further found that this sequencing is the prevailing view and held that "a court must first allocate fault before deciding whether a damages cap applies; if the allocation of fault results in an award below the statutory cap, the law requires no further reduction."

Kisling v. Grosz, 565 P.3d 226 (Alaska 2025).

Legislative review is not recommended.

TO PREVAIL ON A CLAIM OF INFORMED CONSENT IN A MEDICAL MALPRACTICE SUIT, A PLAINTIFF MUST PROVE THAT THE HARM SUFFERED WAS CAUSED BY THE MEDICAL TREATMENT OR COURSE OF CARE RECEIVED.

The plaintiffs sued a midwifery practice for wrongful death, alleging negligence and a lack of informed consent, after experiencing a stillbirth at the midwifery practice. They alleged that they would not have consented to treatment at the practice had they been adequately informed of the risks. The practice submitted evidence that the death was due to natural causes unrelated to the treatment the plaintiffs had received under their care, which went undisputed by the plaintiffs. The plaintiffs appealed after the superior court granted summary judgment in favor of the midwifery practice based on a lack of evidence of medical causation of the death.

On appeal, the Alaska Supreme Court first explained that proof that the treatment or care caused the harm suffered, also referred to as "medical causation," is an essential element of the common law tort of informed consent. However, the state's informed consent statute, AS 09.55.556(a), does not specifically mention medical causation. The court looked to the text and legislative history of the statute and found no evidence that the legislature intended to abolish the common-law requirement to prove that the medical treatment caused the injury. Therefore, the court held that medical causation is an essential element that must be shown for a plaintiff to prevail on a claim of informed consent. Because the plaintiffs did not produce any evidence of medical causation in this case, the supreme court upheld the grant of summary judgment against the plaintiffs.

Goodwin v. Mat-Su Midwifery, Inc., 562 P.3d 26 (Alaska 2024).

Legislative review is not recommended unless the legislature wishes to abrogate the common law element of medical causation in informed consent claims.

AS 09.65.070(d)(4)

A MUNICIPALITY THAT PROVIDES EMERGENCY SERVICES OUTSIDE MUNICIPAL LIMITS WITHOUT LEGAL OBLIGATION AND CHARGES A STANDARD FARE FOR THE SERVICES IS NOT LIABLE FOR DAMAGES RESULTING FROM THOSE SERVICES.

A man was injured in an accident outside city limits; the city's emergency services nevertheless responded. Subsequently, the man sued the city and an emergency-responder employee ("city") for negligently providing assistance and aggravating his injuries. The superior court granted summary judgment in favor of the city, finding that the suit was improper under AS 09.65.070(d)(4), which bars suits against municipalities and municipal employees resulting from the "gratuitous extension of municipal services" beyond city limits.

On appeal, the man argued that the city's emergency response was not gratuitous because he was billed a fee for each mile the ambulance traveled. He argued that "gratuitous" means "without extra cost." The city argued that the statute instead applies to services that are provided without any legal obligation and without charging more than the standard fee.

The Alaska Supreme Court affirmed, agreeing that AS 09.65.070(d)(4) barred the lawsuit. In coming to its decision, the court noted that there are multiple legal definitions of "gratuitous" which could lend support to either interpretation asserted. However, based on a review of the broader context and legislative history of the statute, the court found that the legislature's primary purpose of granting immunity from civil liability to a city when providing extraterritorial services was to increase the availability and likelihood of prompt emergency care. Adopting the "without extra cost" definition of gratuitous would force municipalities to choose either to provide services beyond their city limits free of charge or risk being sued. The court reasoned that "municipalities faced with the choice of shouldering the cost of extraterritorial rescues themselves or risking expensive damage awards in lawsuits would likely just stop providing services," a result that would be contrary to what the legislature intended. Therefore, the court held that "gratuitous" means "without legal obligation" under AS 09.65.070(d)(4). Because the city had no obligation to provide the emergency services and charged the standard fare, the court found the city was immune from liability.

Rochon v. City of Nome, 568 P.3d 8 (Alaska 2025).

Legislative review is not recommended.

AS 11.46.482(a)(1)
AS 11.61.100(a)

THE CRIME OF RIOT REQUIRES A MUTUAL AGREEMENT TO PARTICIPATE AND CREATION OF A LIKELIHOOD OF PUBLIC TERROR AND ALARM; THE CRIME OF CRIMINAL MISCHIEF REQUIRES A CONSCIOUS OBJECTIVE OF CAUSING PROPERTY DAMAGE.

Three defendants were among a group of inmates who participated in an altercation at a correctional facility. Following this incident, the defendants were indicted for riot and third-degree criminal mischief. The defendants were convicted of both crimes and appealed.

The Alaska Court of Appeals first examined AS 11.61.100(a), the riot statute, which provides that a person commits the crime of riot "if, while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person." The court applied the intent requirements of the common-law crime of riot to the "participating with" element and held that the element requires "a mutual agreement by the defendant and at least five other people (1) to achieve or advance a shared purpose (2) by engaging in tumultuous and violent conduct, and (3) by assisting each other in committing this tumultuous and violent conduct, including resisting anyone who might oppose it." The court further concluded that a bystander who encourages violence may become liable as an accomplice to riot, but bystanders who are not part of the mutual agreement "don't count toward the statutorily required minimum number of participants."

The court next examined the "tumultuous and violent conduct" element of AS 11.61.100(a). Reviewing the legislative history of the statute, the court concluded that "tumultuous" means "creating a likelihood of public terror and alarm." The court also concluded that the state must prove that a defendant engaged in violent conduct, not just that others responded to the defendant's conduct with violence.

The court then turned to the defendants' convictions for third-degree criminal mischief under AS 11.46.482(a)(1). One of the elements of this statute is that a person, "with intent to damage property of another, . . . damages property of another in an amount of \$750 or more." The court explained that, because this crime is a "specific intent" crime, the government must prove both that a person caused property damage and did so

with "the *conscious goal* of damaging" the property. Thus, the court explained that the defendants could not be convicted based on a theory of negligence or recklessness.

As no evidence existed that the defendants directly caused any of the damage, the state argued that the damage was the result of the defendants' actions. The court held that, in this context, the state must prove that the defendants' actions were the proximate cause of the property damage and that the defendants "acted with the conscious objective of causing the damage."

Because the jury instructions provided by the trial court did not comply with these holdings, the court of appeals reversed the defendants' convictions for riot and third-degree criminal mischief.

Burton-Hill v. State, 569 P.3d 1 (Alaska App. 2025).

Legislative review is not recommended unless the legislature wishes to modify the elements of the crimes of riot or third-degree criminal mischief.

AS 11.81.900(b)(61)

THE TERM "GENITALS" INCLUDES THE MONS PUBIS WHEN DEFINING THE TERM "SEXUAL CONTACT."

A defendant was charged with multiple counts of sexual abuse of a minor for allegedly "engaging in sexual contact" with a minor. "Sexual contact" is defined in AS 11.81.900(b)(61)(A)(i) as "the defendant's knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast." The trial court, in response to a jury question, instructed the jury that the term "genitals" includes the mons pubis. After conviction, the defendant appealed and argued that the term "genitals" as used in the statutory definition of "sexual contact" excludes the mons pubis.

Despite the appellant's assertion that the court may only rely on the "common usage" of a term to determine its meaning, the Alaska Court of Appeals explained that AS 01.10.040(a) provides that a word that has acquired a particular or technical meaning is not required to be construed according to its common usage. Finding that the term "genitals" has both a common and a technical meaning, the appellate court relied on medical definitions of the term, as well as the decisions of other state courts, to conclude that the mons pubis is part of the

"genitals." The court found this interpretation was also supported by the legislative history and purpose of the statute. Specifically, the court stated that including "the mons pubis within the definition of 'genitals' better supports the statute's purpose of protecting children from adult sexual predation."

Bartman v. State, 563 P.3d 121 (Alaska App. 2025).

Legislative review is not recommended.

AS 12.55.027(g)

AN INDIVIDUAL WHO HAS COMMITTED AN OFFENSE FOR WHICH ELECTRONIC MONITORING CREDIT IS GENERALLY PROHIBITED MAY STILL BE GRANTED CREDIT TOWARDS IMPRISONMENT FOR TIME SPENT IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM WHILE ON ELECTRONIC MONITORING.

The appellant was convicted of second-degree assault after spending more than nine months on court-ordered electronic monitoring, approximately one month of which was spent in a residential treatment program. AS 12.55.027(g) restricts a court from granting credit for electronic monitoring towards imprisonment for certain crimes, including the crime of which the appellant was convicted, "[u]nless the defendant participated in a residential treatment program [. . .] while under electronic monitoring." The superior court ultimately only granted the appellant credit for time also spent in residential treatment and denied credit for the remainder of the time spent on electronic monitoring.

The appellant argued to the Alaska Court of Appeals that she was entitled to credit for the entire period spent on electronic monitoring under the plain language of the statute. The state argued conversely that the language of the statute was ambiguous, but that the legislative history of the statute supported only granting credit towards imprisonment for time spent on electronic monitoring while in a residential treatment program if the defendant is charged with a crime not otherwise eligible for such credit.

The court of appeals first found that the plain language of the statute "could be viewed as ambiguous" However, the court determined that the legislative history of the statute "convincingly" supported the state's position. Specifically, the court found that the "unless" language was proposed to ensure

people who had committed a crime that was otherwise ineligible for electronic monitoring credit would not be dissuaded from getting necessary treatment because they would be able "to get credit just for the treatment." The court found this interpretation was further bolstered by AS 12.55.027(k), which clarifies that credit for time spent on electronic monitoring and credit for time spent in residential treatment are distinct and may not be double-counted. Therefore, the court held that a defendant in the appellant's position may be granted credit for time spent in a residential treatment center while not receiving credit for other time spent on electronic monitoring.

Tarbox v. State, 2025 WL 2680640 (Alaska App. Sept. 19, 2025).

Legislative review is not recommended.

AS 12.72.020(b)(2)

A DEFENDANT RAISING AN UNTIMELY POST-CONVICTION RELIEF CLAIM OF NEWLY DISCOVERED EVIDENCE OF INNOCENCE MUST PROVE IT IS HIGHLY PROBABLE THAT THE NEW EVIDENCE WOULD RESULT IN AN ACQUITTAL.

A man challenged his convictions for murder and attempted murder in an application for post-conviction relief after the convictions were upheld on his direct appeal. The man asserted that he was innocent, and he asked for access to evidence from the crime scene for the purpose of DNA testing that he argued could help prove his innocence.

Under AS 12.72.020(a)(3), an application for post-conviction relief after a direct appeal must ordinarily be brought within one year from when the appellate court's decision is final. The man's application was not submitted within this period. But under AS 12.72.020(b)(2), an otherwise untimely application for post-conviction relief may be submitted if, among other requirements, it "establishes by clear and convincing evidence that the applicant is innocent."

The superior court dismissed the man's application at an early stage of the proceedings called summary disposition, without a hearing to evaluate the evidence supporting the application, in part because the court concluded that the DNA evidence offered by the man did not establish his innocence by clear and convincing evidence.

On appeal, the Alaska Court of Appeals explained that it was "unsettled what a defendant who files an untimely application for post-conviction relief must prove to have their newly discovered evidence claim heard under AS 12.72.020(b)(2)." Reviewing the plain language and legislative history of the statute in light of existing settled law, the court declined to find a "binary dichotomy" between "factual or actual innocence" and "legal innocence." In doing so, the court rejected the state's argument that a defendant "must affirmatively prove they did not commit the crime" as a factual matter. Instead, the court concluded that the term "innocence" is best viewed "through the lens of the likelihood of acquittal." Therefore, the court held that a "defendant raising an untimely claim of newly discovered evidence of innocence under AS 12.72.020(b)(2) must prove by clear and convincing evidence that the outcome would be an acquittal. In other words, the defendant must prove that it is 'highly probable' that the newly discovered evidence would result in an acquittal when considered with the totality of evidence." Under the facts of the case, the court held that the man's application should not have been dismissed at the summary disposition stage and thus reversed the dismissal of the man's post-conviction relief application.

Marino v. State, 577 P.3d 992 (Alaska App. 2025).

Legislative review is not recommended.

AS 13.26.226(c)
AS 13.26.236

**COURTS MAY ONLY RELY ON A VISITOR REPORT
REQUIRED TO BE FILED IN A GUARDIANSHIP
PROCEEDING IF THE REPORT IS ADMITTED INTO
EVIDENCE.**

A nonprofit filed a petition to appoint the Office of Public Advocacy's Public Guardian as a full guardian of a young adult. The superior court appointed a visitor who performed interviews and filed a report with the court. At the superior court hearing, the visitor related her observations to the court but did not testify under oath and her report was not offered or admitted as evidence. The superior court held that the visitor's report, as well as other evidence, constituted clear and convincing evidence that the young adult was incapacitated and appointed a full guardian for the young adult.

On appeal, the Alaska Supreme Court held that it was error for

the superior court to base some of its findings on the visitor's report. The court explained that the applicable visitor statutes, AS 13.26.226(c) and 13.26.236, "do not specify the circumstances under which the court may rely on the visitor's report in making findings in support of a determination of incapacity or the scope of a guardianship." The requirement in those statutes that the visitor "file" a report, without more, does not allow the superior court to rely on the report as evidence. The court identified the root cause of courts improperly relying on visitor reports that are not introduced into evidence as a "lack of guidance from the statutes and our previous cases" and held that a visitor should be "sworn as a witness to affirm the information in the report." The court, however, determined that the error was harmless because the same information was also introduced through evidence that was properly in the record.

Matter of G.J.F., 563 P.3d 1140 (Alaska 2025).

Legislative review is not recommended unless the legislature wishes to specify the circumstances under which a court may rely on a visitor's report.

AS 15.25.100(c)

THE DIVISION OF ELECTIONS MUST MAKE SUCCESSIVE REPLACEMENTS ON THE GENERAL ELECTION BALLOT IF MORE THAN ONE TOP-FOUR PRIMARY CANDIDATE TIMELY WITHDRAWS AND MORE PRIMARY CANDIDATES ARE AVAILABLE.

A man incarcerated in New York ran for Alaska's seat in the House of Representatives during the 2024 primary election. Under AS 15.25.100(a), the director of the division of elections "shall place on the general election ballot only the names of the four candidates receiving the greatest number of votes for an office." The man finished sixth in the primary election and thus was not initially placed on the general election ballot.

Two of the top four candidates in the primary election withdrew from the general election prior to the withdrawal deadline. Under AS 15.25.100(c), when a candidate timely withdraws "the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election." The director interpreted AS 15.25.100(c) to require placement of the candidates who placed fifth and sixth in the primary

election, including the incarcerated man, on the general election ballot to fill the two vacancies.

The Alaska Democratic Party filed a lawsuit challenging the director's decision to include the incarcerated man on the general election ballot. The party argued that AS 15.25.100(c) only allowed the director to replace a single candidate on the general election ballot with the candidate who received the fifth most votes in the primary and did not permit successive replacements with other primary candidates that received even fewer votes. The superior court disagreed and held that the division had correctly placed the incarcerated man on the ballot.

On appeal, the Alaska Supreme Court agreed that the division had correctly placed the incarcerated man on the ballot under AS 15.25.100(c). The court explained that AS 15.25.100(c) is ambiguous, and it thus examined materials available to voters when they enacted the amendments to the statute by initiative. Those materials, although not definitive, indicated that the initiative was intended to increase candidate choice. The court also noted that its existing precedent required interpreting ambiguous statutes to favor increased ballot access, and the division's interpretation aligned with this approach. Therefore, the court held that AS 15.25.100(c) "requires the director to fill successive timely vacancies on the general election ballot if more than one top-four primary candidate timely withdraws and additional primary candidates are available."

Alaska Democratic Party v. Beecher, 572 P.3d 556 (Alaska 2025).

Legislative review is not recommended unless the legislature wishes to only allow a single replacement candidate on the general election ballot when multiple candidates withdraw.

AS 15.45.130 -
15.45.160
AS 15.45.190

THE DIVISION OF ELECTIONS MAY ALLOW INITIATIVE SPONSORS TO CURE DEFECTS IN SIGNATURE BOOKLETS AT ANY TIME DURING THE STATUTORY 60-DAY REVIEW PERIOD.

Sponsors filed an application for a citizen ballot initiative. The sponsors submitted signed petition booklets to the division of elections within the one-year time period required under AS 15.45.140(a), and the division accepted most of the booklets. This triggered the start of the 60-day period under

AS 15.45.150 during which the division must complete its review of the booklets and determine whether the initiative is qualified to be placed on a ballot. During this review period, the division returned the deficient booklets to the sponsors for corrections. The sponsors corrected and returned most of the booklets before the end of the 60-day review period, but after the one-year deadline for signature-gathering under AS 15.45.140(a). The division determined that, with the corrected booklets, the initiative qualified for the ballot. Plaintiffs filed a lawsuit arguing that the division should not have certified the initiative. The superior court granted summary judgment for the division and the plaintiffs appealed.

The Alaska Supreme Court first considered whether the statutory filing deadlines, specifically AS 15.45.140 and AS 15.45.190, allow post-filing corrections to certifications. The court explained that this matter required the court to interpret AS 15.45.130, which provides in relevant part that "[i]n determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted." Applying common rules of grammar and statutory rules of construction, the court determined that the plain language of the statute allowed corrections to the booklets during the 60-day review period even if that period is after the other statutory filing deadlines. The court next analyzed whether AS 15.45.130 only authorizes "technical" corrections to booklets. Considering the dictionary definition of "correct," the court determined that the plain meaning of the statute allows sponsors to correct certifications by replacing deficient ones and that nothing in the statute limits the replacements to technical corrections. The court finally found that the legislative history of the statute supports the interpretation that the legislature intended to allow corrections during the 60-day period. For these reasons, the court held that AS 15.45.130 allows sponsors to correct circulators' certifications during the 60-day review period.

Med. Crow v. Beecher, 570 P.3d 452 (Alaska 2025).

Legislative review is not recommended.

AS 16.05.020
AS 16.05.270
AS 16.20.500
AS 16.20.530

THE COMMISSIONER OF THE DEPARTMENT OF FISH AND GAME HAS REGULATORY AUTHORITY TO DETERMINE WHETHER SPECIFIC USES ARE COMPATIBLE WITH THE PRIMARY PURPOSE OF CRITICAL HABITAT AREAS.

In 1972, the legislature enacted Critical Habitat Area (CHA) statutes. AS 16.20.500 provides that the purpose of these statutes is "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." In 2000, the commissioner promulgated a regulation banning jet skis in two CHAs. In 2021, the commissioner repealed the regulation. Cook Inletkeeper sued the department arguing that the repeal was invalid. The superior court granted summary judgment in favor of Cook Inletkeeper and reinstated the regulation. The state appealed.

On appeal, the Alaska Supreme Court addressed whether the commissioner has regulatory authority to determine whether specific uses are compatible with the primary purpose of the CHAs. While the legislature did not explicitly grant this authority to the commissioner, the court first determined that the commissioner has the rulemaking authority necessary for the regulation for two reasons. First, the commissioner has implied statutory authority to approve uses within CHAs that derives from a combination of the commissioner's broad regulatory authority over fish, game, and aquatic plant resources provided under AS 16.05.020 and the commissioner's power to approve plans and specifications for compatible uses within CHAs under AS 16.20.530(b). Second, the Board of Fisheries and Board of Game (boards) have authority to determine whether uses of CHAs are subject to the permitting requirements under AS 16.20.530(a), which was delegated to the commissioner by the boards in regulation as permitted under AS 16.05.270. The court resultingly determined that the commissioner has authority to enact such regulations, and that authority also provides the commissioner with the authority to amend or repeal the regulations.

The court next analyzed whether the repeal of the regulation was consistent with the CHA statutes. The court determined that the legislature intended to grant the boards and commissioner significant discretion in determining what uses are compatible with protecting critical habitats and intended to permit some uses that have adverse impacts on habitat. The court noted that this interpretation did not conflict with the

limited legislative history for the CHA statutes. As such, the court determined that the repeal of the regulation was consistent with the CHA statutes.

After determining that the repeal of the regulation was also reasonable and not arbitrary, the court remanded the case to the superior court for an entry of summary judgment in favor of the state.

Dept. of Fish & Game v. Cook Inletkeeper, 576 P.3d 654 (Alaska 2025).

Legislative review is not recommended unless the legislature wishes to alter the commissioner's authority to promulgate regulations on the specific uses that are compatible with the primary purpose of the CHAs.

AS 16.05.940(35)

"TAKING" AN ANIMAL IS AN ONGOING COURSE OF CONDUCT INCLUDING ALL ACTIONS REQUIRED TO KILL OR CAPTURE THE ANIMAL.

Big game guides led a client on a goat hunt. The client shot and fatally wounded a goat; however, the goat ran away, leaving the line of sight of the hunting party. The party split up to search for the goat. Once the goat was spotted, a guide used a radio to convey the goat's location to the rest of the party. The client then fired a second shot, killing the animal.

The state charged the guides with a violation of Alaska Administrative Code 92.080(7)(1), which prohibits "taking" a game animal with the aid of a wireless communication device, and additional related offenses. Under AS 16.05.940(35), "take" is defined as "taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing, or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game."

The guides argued that they had not used the radio to "take" the goat since the goat was already "taken" at the point when it was fatally shot by the client. Further the guides argued that the state's definition of "take" was constitutionally overbroad, and that their due process rights were violated because after the client shot and terminally wounded the goat, they were faced with competing legal obligations that all carried criminal sanctions. The district court found in favor of the guides and dismissed the charges. The state appealed.

The Alaska Court of Appeals reversed the district court's dismissal. The court first noted that there was an absence of legislative history surrounding the adoption of the definition of "take" under AS 16.05.940(35). The court instead relied on the plain language of the statute and the historical interpretation of the term by the Alaska Board of Game to find that the definition of "take" includes ongoing conduct until the point when an animal is captured or killed. Therefore, the taking of the goat was not complete when the hunter first shot and wounded it. The court further concluded that the statutory definition of "take" does provide sufficient notice to hunters and is not vague or ambiguous. Regarding the question of whether the definition gave undue discretion to the state in prosecuting hunters, the court noted that appellate courts have previously found that a hypothetical concern is not sufficient to invalidate a statute. Because the hunters did not provide any analysis for their assertion or concrete examples of arbitrary enforcement of the statute, the court found that the statute did not give undue discretion to the state. Finally, the court concluded that the prohibition against using wireless communications to take the goat did not create an irreconcilable legal dilemma for the guides, because the guides had "a legal option available to them for completing the hunt: locating and killing the goat *without* the use of radios."

State v. Rosenbruch-Decker, 567 P.3d 715 (Alaska App. 2025).

Legislative review is not recommended.

AS 18.66.100(c)(1)

LONG-TERM DOMESTIC VIOLENCE PROTECTIVE ORDERS ISSUED UNDER AS 18.66.100(c)(1) ARE EFFECTIVE FOR AN INDEFINITE DURATION.

In 2013 the superior court issued a long-term domestic violence protective order (DVPO) against a man under AS 18.66.100 after finding that the man had committed or attempted to commit a crime involving domestic violence against his ex-wife. Under AS 18.66.100(c)(1), a court may issue a DVPO that prohibits "threatening to commit or committing domestic violence, stalking, or harassment" that is "effective until further order of the court." The DVPO issued by the superior court included this provision. A DVPO may also include other provisions that "are effective for one year unless earlier dissolved by court order," including prohibiting the person "from using or possessing a deadly weapon" and

directing the person "to surrender any firearm owned or possessed by the [person] if the court finds that the [person] was in the actual possession of or used a firearm during the commission of the domestic violence." The DVPO issued by the superior court also included these two other provisions; they were effective for one year and expired in 2014.

In 2019 the man attempted to buy a gun, but he was denied approval for the purchase after a federal background check. The federal government denied approval for the purchase because it determined that the DVPO satisfied 18 U.S.C. 922(g)(8), a federal law that prohibits the sale of firearms to a person subject to a qualifying court order. The man then filed suit against the state, claiming that he was no longer subject to the DVPO. The superior court rejected the man's arguments.

On appeal, the Alaska Supreme Court affirmed the superior court's decision. The supreme court held that the plain meaning and the legislative history of AS 18.66.100 demonstrated that the legislature intended DVPOs based on AS 18.66.100(c)(1) to have an indefinite duration, so the DVPO remained in effect in 2019 when the man tried to buy a gun, even though the other provisions of the DVPO not based on subsection (c)(1) had expired in 2014. The supreme court also concluded that the DVPO was a qualifying order under federal law, and the man thus was prohibited by federal law from buying a gun.

Eng v. State, Dep't of Pub. Safety, 557 P.3d 1198 (Alaska 2024).

Legislative review is not recommended.

AS 21.07.030(a)
AS 21.36.495

A THIRD PARTY MAY NOT SUE A HEALTH CARE INSURER FOR VIOLATING THE 80TH PERCENTILE RULE BUT MAY SUE AN INSURER FOR VIOLATING THE PROMPT PAY RULE.

The plaintiff, a health insurance company, sued a substance abuse treatment center in federal court. The defendant counterclaimed that the plaintiff had violated a regulation derived from AS 21.07.030(a), which, at the time the claim arose, provided in part that payment from insurers for covered health services should be based on an amount that "is equal to or greater than the 80th percentile of charges." The defendant also argued that the plaintiff violated AS 21.36.495, which establishes a prompt pay rule for health care insurance claims.

The plaintiff argued that a previous Alaska Supreme Court case, which held that a third party claimant has no cause of action against an insurer under AS 21.36.125, demonstrates that third parties should be denied private rights of action under AS 21 and moved to dismiss the counterclaims.

The U.S. District Court for Alaska first determined that no existing state precedent applied to either statute in question. Specifically, the court determined that the Alaska Supreme Court case raised by the plaintiff was limited to AS 21.36.125, which relates to unfair claim settlement practices, and did not preclude a private right of action for all provisions of AS 21. The court then looked to the Restatement (Second) of Torts for the factors to consider in determining whether the legislature intended to create a private right of action for third parties in either statute.

For the regulatory 80th percentile rule derived from AS 21.07.030(a), the court found that the factors weighed against implying a private cause of action by a provider of medical services to enforce the rule. However, the court found that the factors weighed in favor of implying a private cause of action to enforce the prompt pay rule under AS 21.36.495. The court therefore granted the plaintiff's motion to dismiss the counterclaim for the 80th percentile rule and denied the plaintiff's motion to dismiss the counterclaim for the prompt pay rule.

Moda Health Plan, Inc. v. New Life Treatment Ctr., 2025 WL 404913 (D. Alaska Feb. 5, 2025).

Legislative review is recommended if the legislature wishes to prohibit a private right of action for third parties under AS 21.36.495.

AS 25.23.140(b)

THE ONE-YEAR DEADLINE FOR CHALLENGING AN ADOPTION IS NOT TOLLED BY A PARENT APPEALING AN ORDER TERMINATING THE PARENT'S PARENTAL RIGHTS IN A CHILD-IN-NEED-OF-AID CASE.

In 2019, a superior court terminated the parental rights of a mother and father in two consolidated child-in-need-of-aid (CINA) cases. The foster parents of the children petitioned to adopt the children and the adoption was finalized later that year. Over the next several years, the Alaska Supreme Court twice reversed the superior court's termination orders and

remanded the case twice. In 2023, the parents filed a motion for relief in the adoption case and argued that they were not barred by the one-year deadline to appeal an adoption under AS 25.23.140(b). The superior court denied the parents' motion and the parents appealed.

On appeal, the Alaska Supreme Court analyzed whether the one-year deadline to challenge an adoption under AS 25.23.140(b) could be tolled by the appeal of an order terminating parental rights in a CINA case. AS 25.23.140(b) provides that the one-year deadline is "[s]ubject to the disposition of an appeal" The court determined that "appeal" is only used in that context to refer to the appeal of an order or decree entered under AS 25.23, the adoption chapter. To support this interpretation, the court pointed to AS 25.23.140(a) which only provides authorization to appeal a final order or decree entered under AS 25.23. The court also pointed to the sweeping language used in the prohibition and noted that the legislative purpose of the prohibition is that "at some point adoptions must be final[.]" As a result, the court concluded that "only an appeal of an adoption decree tolls the one-year period." Because the appeal of the CINA case was not an appeal that may toll the one-year deadline, the court determined that the adoption appeal was untimely and the adoption could not be challenged now.

Matter of Adoption of C.R., 572 P.3d 568, 570 (Alaska 2025).

Legislative review is not recommended unless the legislature wishes to allow the one-year deadline to challenge an adoption to be tolled by the appeal of a CINA case.

AS 28.15.031(b)(1)
AS 28.37.150(2)

**AN OUTSTANDING DRIVER'S LICENSE
REVOCAION IN ANY OTHER JURISDICTION
PRECLUDES LICENSURE IN ALASKA.**

New York authorities permanently revoked a man's driver's license after he was convicted of three alcohol-related driving offenses. The man moved to Alaska and eventually applied for an Alaska driver's license. His application was denied by the Division of Motor Vehicles (DMV) on the basis that AS 28.15.031(b)(1) prohibits issuing a license to anyone whose driving privileges are revoked in Alaska or any other jurisdiction. The superior court affirmed the decision of the DMV.

On appeal, the man argued that Alaska's licensing statutes conflict, and that the conflict should be resolved in his favor. Specifically, he argued that AS 28.37.150(2), a provision of the Interstate Driver License Compact, permitted him to apply for and obtain driving privileges in Alaska "after the expiration of one year from the date" his license was revoked, and that the terms of this statute allow his application to be denied only "if, after investigation, the licensing authority determines that it will not be safe to grant" him the privilege of driving.

The Alaska Supreme Court affirmed, agreeing that the DMV properly denied the license application under AS 28.15.031(b)(1), and finding that AS 28.15.031(b)(1) and the compact do not conflict, but operate in harmony. Considering canons of statutory interpretation and relevant legislative history, the court reasoned that the compact statutes, in large part, dictate the way the DMV must consider an applicant's out-of-state driving record, but when an applicant's license is revoked in another jurisdiction, Alaska's other licensing statutes, including AS 28.15.031(b)(1), control. Although the compact does permit an individual whose license has been revoked to "make application for a new license," it does so only if "permitted by law" Under AS 28.15.031(b)(1), it is not permitted. Because AS 28.15.031(b)(1) controls, the court concluded that an applicant who has an outstanding license revocation in any other jurisdiction may not obtain an Alaska license.

Rivera v. Dep't of Admin., Div. of Motor Vehicles, 564 P.3d 1040 (Alaska 2025).

Legislative review is not recommended.

AS 28.20.445(d)(1)
AS 28.22.231(1)

ALASKA LAW DOES NOT ALLOW AN INSURANCE POLICY TO EXCLUDE UNINSURED AND UNDERINSURED MOTORIST COVERAGE FOR A VEHICLE NOT INSURED UNDER THE SAME POLICY UNDER WHICH COVERAGE IS SOUGHT.

A driver owned two vehicles: a personal car and one he operated as a taxi. He insured the cars with different insurers. The policy for his personal vehicle included uninsured and underinsured (UIM) motorist coverage but specifically excluded UIM coverage for other vehicles owned by the insured that were not insured under the same policy. When the driver was struck by an uninsured motorist while driving his

taxi, he filed an UIM claim with the insurer of his personal vehicle. The insurance company denied the claim on the basis that the vehicle was not a covered vehicle. The superior court found in favor of the driver, holding that Alaska law does not authorize the exclusion the insurance company relied on in issuing the denial.

In affirming this decision, the Alaska Supreme Court noted that the outcome hinged on the plain meaning of AS 28.20.445(d)(1) and AS 28.22.231(1). Both statutes explicitly allow the exclusion of UIM coverage if: (1) bodily damage, destruction of property, or death of an insured occurs; (2) that result occurs while the insured is occupying a motor vehicle; (3) that motor vehicle is owned by the insured or the insured's spouse or a relative residing in the same household; and (4) the vehicle is not insured by the named insured, spouse, or said relative. However, the court noted that although each statute requires a vehicle to be insured to be included in the UIM coverage, neither statute requires the vehicle to be insured under the same policy for UIM coverage to be available.

While the parties each advanced theories on what policy goals may have been intended by the plain meaning of the statutes, the court found no clear legislative intent. However, the court noted that the plain language of the statutes suggested that the legislature intended to promote the portability of insurance, and when read in conjunction with case law, available legislative history, and other related statutory provisions, concluded that AS 28.20.445(d)(1) and AS 28.22.231(1) were not intended to authorize an "other-owned-insured vehicle exclusion" from UIM coverage. Therefore, the court held that "Alaska law does not authorize excluding UIM coverage for a vehicle not insured under the same insurance policy under which UIM coverage is sought."

Umialik Ins. Co., v. Miftari, 559 P.3d 169 (Alaska 2024).

Legislative review is not recommended.

AS 28.35.030(a)
AS 28.35.033(a)

A JURY MAY PRESUME THAT A DEFENDANT DROVE UNDER THE INFLUENCE OF ALCOHOL IF A CHEMICAL TEST SHOWS THAT THE DEFENDANT'S BLOOD ALCOHOL CONTENT WAS HIGHER THAN .08 REGARDLESS OF WHETHER THE TEST OCCURRED WITHIN FOUR HOURS OF DRIVING.

The defendant was found lying on a highway near a damaged motorcycle. Motorists who found him observed that he was exhibiting signs of intoxication. A chemical test performed at the hospital determined his blood alcohol level to be .249 percent.

Alaska's driving under the influence statute, AS 28.35.030(a), provides two theories of liability: (1) that a defendant drove while under the influence of an alcoholic beverage ("under the influence" theory), and (2) that a defendant had a blood alcohol content of 0.08 percent or higher "as determined by a chemical test taken within four hours after the alleged operating or driving" ("blood alcohol level" theory). A separate statute, AS 28.35.033(a), sets forth a rebuttable presumption that driving under the influence occurred if a defendant provides a chemical test showing a blood alcohol content of 0.08 percent or more.

At trial, the district court instructed the jury on the "under the influence" theory only. The jury was not instructed on the "blood alcohol level" theory because the evidence was not sufficient to show that the chemical test was given within four hours of when the defendant was alleged to have driven the motorcycle, a required element. However, the jury was instructed, in accordance with AS 28.35.033(a)(3), that it may infer that the defendant drove under the influence if a chemical test showed that his blood alcohol content was 0.08 percent or more. The jury returned a guilty verdict.

On appeal, the defendant argued the court erred by instructing the jury that an inference could be drawn from his blood alcohol content. He asserted the four-hour time limit that appears in the "blood alcohol level" theory, also applies to the presumptions established in AS 28.35.033(a).

The court concluded that the plain language of AS 28.35.033(a) omits a time limit for the chemical test and found no apparent legislative history or intent to interpret the statute to the contrary. Accordingly, the court held that when a

defendant is tried under the "under the influence" theory and the jury is given instructions based on the presumptions in AS 28.35.033(a), a court is not required to instruct the jury that the chemical test must be taken within four hours of driving to apply the presumptions.

Converse v. State, 567 P.3d 74 (Alaska App. 2025).

Legislative review is not recommended.

AS 29.40.050
AS 29.40.060

MUNICIPALITIES MAY NOT BROADEN THE SCOPE OF PERSONS ENTITLED TO APPEAL LOCAL LAND USE DECISIONS TO THE SUPERIOR COURT.

Two property owners submitted competing bids for a federal government request to procure a long-term warehouse lease. One property owner requested a determination from the Municipality of Anchorage that the proposed use of its property was consistent with the zoning designation for the property. The municipality's planning department determined the proposed use by the federal government was permissible.

The owner of the property competing for the lease appealed the planning department's decision to the municipality's zoning board. This is the first level of appeal required by state law. Under AS 29.40.050, a municipality "shall provide an appeal from an administrative decision . . . made in the enforcement, administration, or application of a land use regulation . . . to a court, hearing officer, board of adjustment, or other body," and the municipality may "define proper parties" to that appeal. The Anchorage Municipal Code defined the proper parties to a first-level appeal broadly to include the competing property owner. The zoning board considered the appeal and upheld the planning department's land-use decision.

The competing property owner then appealed the zoning board's decision to the superior court. This is the second level of appeal required by state law. Under AS 29.40.060, a municipality "shall provide . . . for an appeal by a municipal officer or person aggrieved . . . to the superior court." The Anchorage Municipal Code provided that "a municipal officer, a taxpayer, or a person jointly or severally aggrieved may appeal to the superior court." The superior court concluded that the competing property owner was a "person aggrieved" and therefore a proper party to bring the second-level appeal.

The Alaska Supreme Court disagreed and concluded that the competing property owner could not bring a second-level appeal to the superior court. The supreme court explained that the competing property owner could bring a first-level appeal to the zoning board because AS 29.40.050 allows the municipality to determine the proper parties to that appeal, and the Anchorage Municipal Code defined the proper parties broadly to include the competing property owner. But the supreme court held that by requiring a municipality to allow a second-level appeal to the superior court from "a municipal officer or person aggrieved" in AS 29.40.060 and not naming "other classes of potential appellants," the legislature intended to prevent a municipality from broadening who may bring a second-level appeal. The Anchorage Municipal Code thus could not allow "a taxpayer" to bring a second-level appeal. Applying established precedent, the supreme court concluded that the competing property owner was not a "person aggrieved" by the land use decision and therefore lacked standing to bring a second-level appeal.

Winco Anchorage Invs. I, L.P. v. Huffman Bldg. P, LLC, 556 P.3d 1194 (Alaska 2024).

Legislative review is not recommended unless the legislature wishes to allow municipalities to broaden the scope of persons entitled to appeal local land use decisions to the superior court.

AS 33.16.090
AS 33.16.100(a)(4)
AS 33.16.100(h)
AS 33.16.130(c)

THE ALASKA PAROLE BOARD MAY DECLINE DISCRETIONARY PAROLE BECAUSE OF THE CIRCUMSTANCES OF A SPECIFIC OFFENSE BUT NOT BECAUSE OF THE TYPE OF OFFENSE; THE BOARD IS NOT REQUIRED TO EXPLAIN THE RELEASE FACTORS THAT A DEFENDANT HAS MET WHEN DENYING DISCRETIONARY PAROLE; THE BOARD HAS SIGNIFICANT DISCRETION WHEN DETERMINING WHETHER A DEFENDANT MUST SERVE ADDITIONAL TIME BEFORE REAPPLYING FOR DISCRETIONARY PAROLE.

In 1987, a man broke into his estranged wife's home, murdered her, and critically injured another person. The man (defendant) was convicted of first-degree murder, first-degree assault, and first-degree burglary and was sentenced to a composite term of 99 years to serve. In 2019, the Alaska Parole Board denied the defendant's first application for discretionary parole and required him to serve an additional ten years before he could

apply for discretionary parole again. The board denied parole in part because it determined that the parole criteria was not met under AS 33.16.100(a)(4), which requires the board to determine there is a reasonable probability that releasing the defendant "on parole would not diminish the seriousness of the crime." The defendant filed an application for post-conviction relief, which was dismissed by the superior court.

On appeal, the Alaska Court of Appeals determined that the board may not deny parole under AS 33.16.100(a)(4) just because the defendant was convicted of a serious crime. The court reasoned that the legislature could have crafted the eligibility criteria for discretionary parole under AS 33.16.090 so that defendants of certain crimes were ineligible if that were the legislature's intent. However, after considering the plain language and legislative history of the statute and a New York court case regarding similar discretionary parole laws, the court concluded that the board may deny parole under AS 33.16.100(a)(4) when the circumstances of a specific offense are significantly aggravated or particularly egregious such that releasing the defendant would engender disrespect for the law or be incompatible with societal norms.

Next, the court held that the board is only required to state the reasons for a discretionary parole denial and identify all of the factors considered relevant to the denial under AS 33.16.130(c). The statute does not require the board to provide additional information and analysis about the release factors that the defendant has met.

Last, the court held that the board did not abuse the board's discretion by requiring under AS 33.16.100(h) that the defendant wait ten years before reapplying for discretionary parole. The court explained that the "legislative history of AS 33.16.100 reflects the legislature's intention to give the Parole Board nearly unbridled discretion when determining that a defendant must serve additional time before they may again apply for discretionary parole." Therefore, given the facts of this case, the court did not require the board to provide any additional explanation or justification regarding the ten-year period.

Stoneking v. State, 567 P.3d 725 (Alaska App. 2025).

Legislative review is not recommended.

AS 47.14.100(p)
AS 47.70.010 -
47.70.080

THE INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN DOES NOT APPLY WHEN THE OFFICE OF CHILDREN'S SERVICES PROPERLY RELEASES CUSTODY OF A CHILD TO A PARENT BASED ON A "BEST INTEREST" FINDING, EVEN IF THE PARENT PLANS TO SUBSEQUENTLY MOVE THE CHILD TO ANOTHER STATE.

The Office of Children's Services (OCS) assumed custody of two children as children-in-need-of-aid. The children's tribe intervened. During the pendency of the custody case the children's father moved to another state. The father continued to work with OCS and eventually OCS no longer had safety concerns with returning his children to his care. In accordance with the Interstate Compact for the Placement of Children, which governs the placement of children in foster or adoptive families among participating states, OCS initiated contact with the father's new home state to begin the process of relocating the children across state lines.

Based on the results of an initial home study, authorities in the father's new home state denied approval under the compact to place the children with their father. After this denial, OCS sought to release the children to their father's custody while he was temporarily in Alaska under AS 47.14.100(p), which allows the agency to release custody when the agency determines, and the court agrees, that doing so is in the best interest of a child. The children's tribe opposed the release, arguing that OCS had not received the other state's support as necessary under the compact. Nevertheless, the superior court found that the compact did not apply to a release of custody under AS 47.14.100(p) and dismissed the case. OCS released the children into the custody of their father before he departed Alaska and the tribe appealed.

The Alaska Supreme Court first determined that the plain language of the compact precludes applying it to this case. The court noted that the compact and AS 47.14.100(p) serve different purposes: the compact allows the state to retain jurisdiction over children in its custody who are placed out of state, while AS 47.14.100(p) governs when the state may release custody. The court explained that this interpretation was supported by other state court decisions and that there is nothing to indicate "that the legislature intended to give child protection agencies from other states veto authority over the in-state disposition of child custody matters." The court held that "when OCS properly releases custody of a child to a parent

pursuant to AS 47.14.100(p), the requirements of the [compact] do not apply even if the parent plans to subsequently depart Alaska with the child."

Native Village of Saint Michael v. Dep't of Fam. & Cmty. Servs., Off. of Children's Servs., 572 P.3d 546 (Alaska 2025).

Legislative review is not recommended.

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