STATE OF ALASKA

Legislative Affairs Agency

A

REPORT TO THE

THIRTY-SECOND 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

DECEMBER 2022

A REPORT TO THE THIRTY-SECOND 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The report lists Alaska Statutes that will be amended or repealed between February 28, 2023, and March 1, 2024, according to laws enacted before the 2023 legislative session.

The report also examines published cases construing Alaska Statutes that were decided by the courts and reported between October 1, 2021, and September 30, 2022,

and

Opinions of the Attorney General that were made available through Internet distribution between October 1, 2021, and September 30, 2022.

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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 2023 Legislature, will be repealed or amended before March 1, 2024, 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 Alex Foote, Noah Klein, and Claire Radford, 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, AND AMENDMENTS

taking effect between February 28, 2023, and March 1, 2024, according to laws enacted before the 2023 legislative session

Laws enacted in 1998

Ch. 12, SLA 1998, sec. 1, as amended by ch. 17, SLA 2003, sec. 1 and ch. 34, SLA 2013, sec. 2 -- Alaska Minerals Commission

AS 44.33.431	Repealed February 1, 2024

Laws enacted in 2008

Ch. 31, SLA 2008, sec. 5, as amended by ch. 12, SLA 2012, sec. 3 -- Renewable energy grant fund and recommendation program

AS 42.45.045	Repealed June 30, 2023

Laws enacted in 2013

Ch. 19, SLA 2013, sec. 11 -- Perfomance reviews, audits, and termination of executive and legislative branch agencies, the University of Alaska, and the Alaska Court System

AS 24.20.231(7)	Repealed July 1, 2023
AS 24.20.271(2)	Repealed July 1, 2023
AS 24.20.311(b)	Repealed July 1, 2023
AS 44.66.020	Repealed July 1, 2023
AS 44.66.040	Repealed July 1, 2023
AS 44.66.070(2)	Repealed July 1, 2023

Ch. 55, SLA 2013, sec. 5 -- Income Tax Act applicabilty; credits

AS 43.20.012(a)	Repealed and reenacted July 1, 2023
AS 43.20.012(c)	Repealed July 1, 2023
AS 43.30.012(d)	Repealed July 1, 2023

Laws enacted in 2016

Ch. 58, SLA 2016, secs. 3 and 6 -- Credit for the in-state manufacture of urea, ammonia, or gas-to-liquid products

AS 43.20.052	Repealed January 1, 2024

Laws enacted in 2022

Ch. 8, SLA 2022, sec. 174 -- Alcohol

AS 04.06.005	Enacted January 1, 2024
AS 04.06.020(b)	Amended January 1, 2024
AS 04.06.020(c)	Amended January 1, 2024
AS 04.06.020(d)(3)	Amended January 1, 2024
AS 04.06.075(c)	Enacted January 1, 2024
AS 04.06.080	Amended January 1, 2024
AS 04.06.090(b)	Amended January 1, 2024
AS 04.06.090(e)	Amended January 1, 2024
AS 04.06.090(f)	Enacted January 1, 2024

AS 04.06.090(i)	Enacted January 1, 2024
AS 04.06.090(j)	Enacted January 1, 2024
AS 04.06.095	Amended January 1, 2024
AS 04.06.095(c)	Enacted January 1, 2024
AS 04.06.100(b)	Amended January 1, 2024
AS 04.09.010	Enacted January 1, 2024
AS 04.09.020	Enacted January 1, 2024
AS 04.09.030	Enacted January 1, 2024
AS 04.09.040	Enacted January 1, 2024
AS 04.09.050	Enacted January 1, 2024
AS 04.09.060	Enacted January 1, 2024
AS 04.09.070	Enacted January 1, 2024
AS 04.09.090	Enacted January 1, 2024
AS 04.09.100	Enacted January 1, 2024
AS 04.09.110	Enacted January 1, 2024
AS 04.09.120	Enacted January 1, 2024
AS 04.09.130	Enacted January 1, 2024
AS 04.09.140	Enacted January 1, 2024
AS 04.09.150	Enacted January 1, 2024
AS 04.09.160	Enacted January 1, 2024
AS 04.09.200	Enacted January 1, 2024
AS 04.09.210	Enacted January 1, 2024
AS 04.09.220	Enacted January 1, 2024
AS 04.09.230	Enacted January 1, 2024
AS 04.09.240	Enacted January 1, 2024
AS 04.09.250	Enacted January 1, 2024
AS 04.09.260	Enacted January 1, 2024
AS 04.09.270	Enacted January 1, 2024
AS 04.09.280	Enacted January 1, 2024
AS 04.09.290	Enacted January 1, 2024
AS 04.09.300	Enacted January 1, 2024
AS 04.09.310	Enacted January 1, 2024
AS 04.09.320	Enacted January 1, 2024
AS 04.09.330	Enacted January 1, 2024
AS 04.09.340	Enacted January 1, 2024
AS 04.09.350	Enacted January 1, 2024
AS 04.09.360	Enacted January 1, 2024
AS 04.09.370	Enacted January 1, 2024
AS 04.09.400	Enacted January 1, 2024
AS 04.09.410	Enacted January 1, 2024
AS 04.09.420	Enacted January 1, 2024
AS 04.09.430	Enacted January 1, 2024
AS 04.09.440	Enacted January 1, 2024
AS 04.09.450	Enacted January 1, 2024
AS 04.09.460	Enacted January 1, 2024
AS 04.09.470	Enacted January 1, 2024
AS 04.09.480	Enacted January 1, 2024
AS 04.09.490	Enacted January 1, 2024
AS 04.09.500	Enacted January 1, 2024

AS 04.09.510	Enacted January 1, 2024
AS 04.09.520	Enacted January 1, 2024
AS 04.09.600	Enacted January 1, 2024
AS 04.09.610	Enacted January 1, 2024
AS 04.09.620	Enacted January 1, 2024
AS 04.09.630	Enacted January 1, 2024
AS 04.09.640	Enacted January 1, 2024
AS 04.09.650	Enacted January 1, 2024
AS 04.09.660	Enacted January 1, 2024
AS 04.09.670	Enacted January 1, 2024
AS 04.09.680	Enacted January 1, 2024
AS 04.09.690	Enacted January 1, 2024
AS 04.09.700	Enacted January 1, 2024
AS 04.09.710	Enacted January 1, 2024
AS 04.09.720	Enacted January 1, 2024
AS 04.09.750	Enacted January 1, 2024
AS 04.09.800	Enacted January 1, 2024
AS 04.11.010(a)	Amended January 1, 2024
AS 04.11.010(b)	Amended January 1, 2024
AS 04.11.010(c)	Amended January 1, 2024
AS 04.11.015	Amended January 1, 2024
AS 04.11.030(b)	Amended January 1, 2024
AS 04.11.040(d)	Enacted January 1, 2024
AS 04.11.040(e)	Enacted January 1, 2024
AS 04.11.045(c)	Enacted January 1, 2024
AS 04.11.045(d)	Enacted January 1, 2024
AS 04.11.050(d)	Enacted January 1, 2024
AS 04.11.050(e)	Enacted January 1, 2024
AS 04.11.055(c)	Enacted January 1, 2024
AS 04.11.055(d)	Enacted January 1, 2024
AS 04.11.060	Amended January 1, 2024
AS 04.11.060(b)	Enacted January 1, 2024
AS 04.11.070	Repealed January 1, 2024
AS 04.11.080	Repealed January 1, 2024
AS 04.11.090	Repealed January 1, 2024
AS 04.11.100	Repealed January 1, 2024
AS 04.11.110	Repealed January 1, 2024
AS 04.11.115	Repealed January 1, 2024
AS 04.11.120	Repealed January 1, 2024
AS 04.11.130	Repealed January 1, 2024
AS 04.11.135	Repealed January 1, 2024
AS 04.11.140	Repealed January 1, 2024
AS 04.11.150	Repealed January 1, 2024
AS 04.11.160	Repealed January 1, 2024
AS 04.11.170	Repealed January 1, 2024
AS 04.11.180	Repealed January 1, 2024
AS 04.11.200	Repealed January 1, 2024
AS 04.11.210	Repealed January 1, 2024
AS 04.11.220	Repealed January 1, 2024

AS 04.11.225	Repealed January 1, 2024
AS 04.11.230	Repealed January 1, 2024
AS 04.11.240	Repealed January 1, 2024
AS 04.11.250	Repealed January 1, 2024
AS 04.11.255	Repealed January 1, 2024
AS 04.11.260	Amended January 1, 2024
AS 04.11.260(f)	Enacted January 1, 2024
AS 04.11.270	Amended January 1, 2024
AS 04.11.270(c)	Enacted January 1, 2024
AS 04.11.280	Amended January 1, 2024
AS 04.11.280(c)	Enacted January 1, 2024
AS 04.11.280(d)	Enacted January 1, 2024
AS 04.11.295(a)	Amended January 1, 2024
AS 04.11.295(c)(1)	Amended January 1, 2024
AS 04.11.310(c)	Enacted January 1, 2024
AS 04.11.315	Enacted January 1, 2024
AS 04.11.320(a)	Amended January 1, 2024
AS 04.11.330(a)	Amended January 1, 2024
AS 04.11.330(b)	Amended January 1, 2024
AS 04.11.330(d)	Amended January 1, 2024
AS 04.11.330(e)	Enacted January 1, 2024
AS 04.11.340	Amended January 1, 2024
AS 04.11.360	Amended January 1, 2024
AS 04.11.365	Amended January 1, 2024
AS 04.11.370(a)	Amended January 1, 2024
AS 04.11.395	Amended January 1, 2024
AS 04.11.395(b)	Enacted January 1, 2024
AS 04.11.400(a)	Amended January 1, 2024
AS 04.11.400(d)	Repealed January 1, 2024
AS 04.11.400(h)	Repealed January 1, 2024
AS 04.11.400(i)	Repealed and reenacted January 1, 2024
AS 04.11.400(j)	Repealed January 1, 2024
AS 04.11.400(k)	Amended January 1, 2024
AS 04.11.405(a)	Amended January 1, 2024
AS 04.11.405(b)	Amended January 1, 2024
AS 04.11.420(a)	Amended January 1, 2024
AS 04.11.420(c)	Enacted January 1, 2024
AS 04.11.450(b)	Amended January 1, 2024
AS 04.11.405(e)	Amended January 1, 2024
AS 04.11.450(f)	Enacted January 1, 2024
AS 04.11.450(g)	Enacted January 1, 2024
AS 04.11.460(c)	Enacted January 1, 2024
AS 04.11.470	Amended January 1, 2024
AS 04.11.480(a)	Amended January 1, 2024
AS 04.11.480(b)	Amended January 1, 2024
AS 04.11.480(c)	Amended January 1, 2024
AS 04.11.480(e)	Enacted January 1, 2024
AS 04.11.491(a)	Amended January 1, 2024

AS 04.11.491(b)	Amended January 1, 2024
AS 04.11.491(d)	Amended January 1, 2024
AS 04.11.491(g)	Amended January 1, 2024
AS 04.11.510(b)	Amended January 1, 2024
AS 04.11.510(c)	Amended January 1, 2024
AS 04.11.520	Amended January 1, 2024
AS 04.11.535(a)	Amended January 1, 2024
AS 04.11.540	Amended January 1, 2024
AS 04.11.560(b)	Amended January 1, 2024
AS 04.11.570	Amended January 1, 2024
AS 04.11.580(b)	Amended January 1, 2024
AS 04.11.590(a)	Amended January 1, 2024
AS 04.11.610	Amended January 1, 2024
AS 04.11.630(b)	Amended January 1, 2024
AS 04.11.680	Amended January 1, 2024
AS 04.16.010(c)	Amended January 1, 2024
AS 04.16.010(e)	Enacted January 1, 2024
AS 04.16.010(f)	Enacted January 1, 2024
AS 04.16.015(a)	Amended January 1, 2024
AS 04.16.015(e)	Enacted January 1, 2024
AS 04.16.017	Enacted January 1, 2024
AS 04.16.020(d)	Enacted January 1, 2024
AS 04.16.020(e)	Enacted January 1, 2024
AS 04.16.022	Enacted January 1, 2024
AS 04.16.025(a)	Amended January 1, 2024
AS 04.16.030(c)	Enacted January 1, 2024
AS 04.16.030(d)	Enacted January 1, 2024
AS 04.16.030(e)	Enacted January 1, 2024
AS 04.16.030(f)	Enacted January 1, 2024
AS 04.16.030(g)	Enacted January 1, 2024
AS 04.16.035	Amended January 1, 2024
AS 04.16.035(b)	Enacted January 1, 2024
AS 04.16.035(c)	Enacted January 1, 2024
AS 04.16.040(b)	Enacted January 1, 2024
AS 04.16.040(c)	Enacted January 1, 2024
AS 04.16.045(b)	Enacted January 1, 2024
AS 04.16.045(c)	Enacted January 1, 2024
AS 04.16.047(d)	Enacted January 1, 2024
AS 04.16.047(e)	Enacted January 1, 2024
AS 04.16.049(a)	Amended January 1, 2024
AS 04.16.049(c)	Amended January 1, 2024
AS 04.16.049(d)	Amended January 1, 2024
AS 04.16.049(h)	Enacted January 1, 2024
AS 04.16.051(d)	Repealed and reenacted January 1, 2024
AS 04.16.051(e)	Enacted January 1, 2024
AS 04.16.052(b)	Enacted January 1, 2024
AS 04.16.052(c)	Enacted January 1, 2024
AS 04.16.052(d)	Enacted January 1, 2024

AS 04.16.052(e)	Enacted January 1, 2024
AS 04.16.052(f)	Enacted January 1, 2024
AS 04.16.055(b)	Enacted January 1, 2024
AS 04.16.055(c)	Enacted January 1, 2024
AS 04.16.057(b)	Amended January 1, 2024
AS 04.16.060(e)	Amended January 1, 2024
AS 04.16.060(g)	Enacted January 1, 2024
AS 04.16.060(h)	Enacted January 1, 2024
AS 04.16.060(i)	Enacted January 1, 2024
AS 04.16.060(j)	Enacted January 1, 2024
AS 04.16.060(k)	Enacted January 1, 2024
AS 04.16.070	Repealed January 1, 2024
AS 04.16.080	Amended January 1, 2024
AS 04.16.080(b)	Enacted January 1, 2024
AS 04.16.080(c)	Enacted January 1, 2024
AS 04.16.090(c)	Amended January 1, 2024
AS 04.16.090(d)	Enacted January 1, 2024
AS 04.16.090(e)	Enacted January 1, 2024
AS 04.16.100	Repealed January 1, 2024
AS 04.16.110(b)	Enacted January 1, 2024
AS 04.16.110(c)	Enacted January 1, 2024
AS 04.16.120(d)	Enacted January 1, 2024
AS 04.16.120(e)	Enacted January 1, 2024
AS 04.16.120(f)	Enacted January 1, 2024
AS 04.16.120(g)	Enacted January 1, 2024
AS 04.16.125(a)	Amended January 1, 2024
AS 04.16.125(b)	Amended January 1, 2024
AS 04.16.125(d)	Enacted January 1, 2024
AS 04.16.125(e)	Enacted January 1, 2024
AS 04.16.130(c)	Enacted January 1, 2024
AS 04.16.130(d)	Enacted January 1, 2024
AS 04.16.140(b)	Enacted January 1, 2024
AS 04.16.140(c)	Enacted January 1, 2024
AS 04.16.150(b)	Enacted January 1, 2024
AS 04.16.150(c)	Enacted January 1, 2024
AS 04.16.160(c)	Enacted January 1, 2024
AS 04.16.160(d)	Enacted January 1, 2024
AS 04.16.170(b)	Amended January 1, 2024
AS 04.16.170(c)	Enacted January 1, 2024
AS 04.16.170(d)	Enacted January 1, 2024
AS 04.16.172	Amended January 1, 2024
AS 04.16.172(b)	Enacted January 1, 2024
AS 04.16.172(c)	Enacted January 1, 2024
AS 04.16.175(c)	Enacted January 1, 2024
AS 04.16.175(d)	Enacted January 1, 2024
AS 04.16.180(a)	Repealed January 1, 2024
AS 04.16.180(b)	Amended January 1, 2024
AS 04.16.180(d)	Repealed January 1, 2024
AS 04.16.180(e)	Enacted January 1, 2024

AS 04.16.180(f)	Enacted January 1, 2024
AS 04.16.180(g)	Amended January 1, 2024
AS 04.16.210	Repealed January 1, 2024
AS 04.16.220(a)	Amended January 1, 2024
AS 04.16.220(d)	Amended January 1, 2024
AS 04.16.220(g)	Amended January 1, 2024
AS 04.16.220(i)	Amended January 1, 2024
AS 04.21.012	Enacted January 1, 2024
AS 04.21.020(a)	Amended January 1, 2024
AS 04.21.020(b)	Amended January 1, 2024
AS 04.21.025(a)	Repealed and reenacted January 1, 2024
AS 04.21.025(b)	Amended January 1, 2024
AS 04.21.025(c)	Amended January 1, 2024
AS 04.21.025(f)	Enacted January 1, 2024
AS 04.21.025(g)	Enacted January 1, 2024
AS 04.21.025(h)	Enacted January 1, 2024
AS 04.21.050(a)	Amended January 1, 2024
AS 04.21.060(b)	Enacted January 1, 2024
AS 04.21.060(c)	Enacted January 1, 2024
AS 04.21.065(a)	Repealed and reenacted January 1, 2024
AS 04.21.072	Enacted January 1, 2024
AS 04.21.074	Enacted January 1, 2024
AS 04.21.076	Enacted January 1, 2024
AS 04.21.078	Amended January 1, 2024
Former AS 04.21.080(b)(3)	Repealed January 1, 2024
AS 04.21.080(b)(3)	Enacted January 1, 2024
AS 04.21.080(b)(5)	Enacted January 1, 2024
AS 04.21.080(b)(6)	Enacted January 1, 2024
AS 04.21.080(b)(7)	Enacted January 1, 2024
AS 04.21.080(b)(10)	Amended January 1, 2024
AS 04.21.080(b)(12)	Enacted January 1, 2024
AS 04.21.080(b)(18)	Enacted January 1, 2024
AS 04.21.080(b)(21)	Enacted January 1, 2024
AS 04.21.080(b)(22)	Amended January 1, 2024
AS 04.21.080(b)(28)	Enacted January 1, 2024
AS 04.21.080(b)(29)	Enacted January 1, 2024
AS 04.21.080(b)(30)	Enacted January 1, 2024
AS 05.15.690(49)	Amended January 1, 2024
AS 09.65.315(b)	Amended January 1, 2024
AS 11.61.220(d)	Amended January 1, 2024
AS 11.76.100(b)	Amended January 1, 2024
AS 11.76.107(a)	Amended January 1, 2024
AS 11.76.109(d)	Amended January 1, 2024
AS 12.62.400(a)	Amended January 1, 2024
AS 18.56.230(b)	Amended January 1, 2024
AS 18.65.085(c)	Amended January 1, 2024
AS 18.80.230(b)	Amended January 1, 2024

AS 43.60.060	Enacted January 1, 2024
AS 43.70.105(a)	Amended January 1, 2024
AS 45.45.590(1)	Amended January 1, 2024

Ch. 14, SLA 2022, sec. 15 -- Use of proceeds from charitable gaming activity

AS 05.15.150(c)	Repealed July 1, 2023

Ch. 32, SLA 2022, sec. 15, as repealed and reenacted by ch. 55, SLA 2013, sec. 2 -- Income Tax Act applicability

AS 43.20.012(a)	Amended July 1, 2023

Ch. 40, SLA 2022, sec. 57 -- Reading, schools, and education

AS 14.03.040	Amended July 1, 2023
AS 14.03.060(e)	Amended July 1, 2023
AS 14.03.072(a)	Amended July 1, 2023
AS 14.03.078(a)	Amended July 1, 2023
AS 14.03.078(c)	Enacted July 1, 2023
AS 14.03.078(d)	Enacted July 1, 2023
AS 14.03.080(c)	Amended July 1, 2023
AS 14.03.080(d)	Repealed July 1, 2023
AS 14.03.290(4)	Repealed July 1, 2023
AS 14.03.120(h)	Enacted July 1, 2023
AS 14.03.120(i)	Enacted July 1, 2023
AS 14.03.120(j)	Enacted July 1, 2023
AS 14.03.410	Enacted July 1, 2023
AS 14.03.420	Enacted July 1, 2023
AS 14.07.020(a)	Amended July 1, 2023
AS 14.07.020(c)	Amended July 1, 2023
AS 14.07.030(a)(15)	Amended July 1, 2023
AS 14.07.050	Amended July 1, 2023
AS 14.07.165(a)	Amended July 1, 2023
AS 14.07.168	Amended July 1, 2023
AS 14.07.180(a)	Amended July 1, 2023
AS 14.14.115(a)	Amended July 1, 2023
AS 14.17.470	Amended July 1, 2023
AS 14.17.500(d)	Enacted July 1, 2023
AS 14.17.500(e)	Enacted July 1, 2023
AS 14.17.500(f)	Enacted July 1, 2023
AS 14.17.500(g)	Enacted July 1, 2023
AS 14.17.905(a)	Amended July 1, 2023
AS 14.20.015(c)	Amended July 1, 2023
AS 14.20.020(i)	Amended July 1, 2023
AS 14.20.020(*l*)	Enacted July 1, 2023
AS 14.30.760	Enacted July 1, 2023
AS 14.30.765	Enacted July 1, 2023
AS 14.30.770	Enacted July 1, 2023
AS 14.30.775	Enacted July 1, 2023
AS 14.30.780	Enacted July 1, 2023

AS 14.30.800	Enacted July 1, 2023
AS 14.60.010(4)	Enacted July 1, 2023
AS 14.60.010(7)	Enacted July 1, 2023
AS 47.17.290(12)	Amended July 1, 2023

Ch. 44, SLA 2022, sec. 25 -- Sexual assault examination kit testing

AS 44.41.065(a)	Amended July 1, 2023

Ch. 56, SLA 2022, sec. 17 -- Dentistry; dental radiological equipment; dental hygiene; dental assistants

AS 08.01.065(c)	Amended July 1, 2023
AS 08.01.065(k)	Enacted July 1, 2023
AS 08.36.075	Repealed July 1, 2023
AS 08.36.242	Enacted July 1, 2023
AS 08.36.243	Enacted July 1, 2023
AS 08.36.245	Enacted July 1, 2023
AS 18.05.065	Repealed July 1, 2023
AS 18.60.525(e)	Repealed July 1, 2023
AS 44.29.020(d)	Enacted July 1, 2023
AS 44.29.027	Repealed July 1, 2023
AS 44.46.029	Amended July 1, 2023
AS 46.03.022	Amended July 1, 2023

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. 7, Constitution of the State of Alaska
Art. I, sec. 12, Constitution of the State of Alaska
AS 33.30.065(c)

REMOVAL FROM ELECTRONIC MONITORING DOES NOT IMPLICATE THE CONSTITUTIONAL RIGHT TO REHABILITATION; A PRISONER RELEASED ON ELECTRONIC MONITORING HAS A LIBERTY INTEREST PROTECTED BY DUE PROCESS.

An inmate was released on electronic monitoring. A year later, the inmate's probation officer prepared an incident report and terminated him from the electronic monitoring program for non-compliance with the conditions of his electronic monitoring agreement. The inmate's appeal to a probation officer and request for a classification hearing from the Department of Corrections (DOC) were both denied. At a disciplinary hearing, the inmate was found guilty of the infraction and sentenced to 30 days in punitive segregation. The superintendent of the jail affirmed the decision and the inmate was subsequently denied future electronic monitoring. The superior court on appeal found that the DOC process violated the inmate's rights to rehabilitation and due process and vacated the DOC decisions.

Reviewing the superior court's decision, the Alaska Supreme Court noted that there is no statute providing for an appeal of a decision to terminate a person from electronic monitoring. In considering the right to rehabilitation, the court found that the text and legislative history of AS 33.30.065 did not support the argument that the electronic monitoring program was designed for rehabilitation. DOC policies and procedures also did not indicate that DOC operated electronic monitoring as a rehabilitation program. The court concluded that electronic monitoring is not a formal rehabilitation program, but rather a less restrictive form of custody. The court further found that removal from electronic monitoring does not substantially impair a prisoner's access to rehabilitative opportunities. Therefore, the court held that removal from electronic monitoring does not implicate the constitutional right to rehabilitation.

The court next considered a prisoner's right to due process while on electronic monitoring and found that a prisoner who is released on electronic monitoring has a liberty interest

similar to that of a person on parole. The court acknowledged the legislature's statement in AS 33.30.065(c) that DOC's decision to place a prisoner on electronic monitoring "does not create a liberty interest . . . ", but explained that the legislature cannot delineate or override constitutional protections with a statement of intent. The court held that a prisoner released on electronic monitoring has a liberty interest protected by due process.

Ultimately, the court ruled that because the inmate was not terminated from electronic monitoring in an adjudicative proceeding that produced a record adequate for judicial review, the challenge could not be heard as an administrative appeal. Therefore, the inmate would instead be required to pursue his challenge as a civil action in superior court.

Dep't of Corr. v. Stefano, 516 P.3d 486 (Alaska 2022).

Legislative review is not recommended.

Art. II, sec. 15, Constitution of the State of Alaska
Art. IX, sec. 7, Constitution of the State of Alaska
Art. IX, sec. 12, Constitution of the State of Alaska
Art. IX, sec. 13, Constitution of the State of Alaska

THE LEGISLATURE MAY NOT FORWARD FUND APPROPRIATIONS, INCLUDING APPROPRIATIONS FOR EDUCATION.

In 2018, the Thirtieth Legislature passed a bill appropriating money for public education for the upcoming fiscal year 2019 and the subsequent fiscal year 2020. The governor asserted that the forward funding of education for fiscal year 2020, which funded the appropriations with FY 2020 general fund revenues instead of FY 2019 general fund revenues, was invalid. Legislative Council sued, alleging that the governor failed to disburse the amounts required by the appropriations.

The Alaska Supreme Court agreed with the governor. The court explained that an "annual appropriation model" is implicit in the dedicated funds, budget, appropriations, and governor's veto clauses of the Alaska Constitution. Reviewing the history of Alaska's constitutional convention and the court's precedent, the court concluded "that the budget clauses contain an annual appropriation model that promotes comprehensive planning and budget flexibility . . . [and that] [t]he forward-funded appropriations at issue are incompatible with this constitutional model." The court determined that education appropriations are also subject to the annual appropriations model. The court therefore held that the forward-funded appropriations were unconstitutional.

State v. Alaska Legislative Council, 515 P.3d 117 (Alaska 2022).

Legislative review is not recommended.

Art. III, sec. 25, Constitution of the State of Alaska
Art. III, sec. 26, Constitution of the State of Alaska
AS 39.05.080(3)

REJECTION OF HEAD OF PRINCIPAL DEPARTMENT OR MEMBERS OF BOARD OR COMMISSION THAT IS THE HEAD OF A PRINCIPAL DEPARTMENT MUST BE DONE BY JOINT SESSION VOTE; AS 39.05.080(3), PROVIDING THAT FAILURE OF LEGISLATURE TO TAKE CONFIRMATION VOTE IS TANTAMOUNT TO DECLINATION, IS UNCONSTITUTIONAL.

During the second regular session of the Thirty-First Legislature, the governor presented nominees for confirmation. During that session, abbreviated during the early months of the COVID-19 pandemic, the legislature did not meet in joint session to confirm or reject the governor's nominees. Under AS 39.05.080(3) the legislature's failure "to act to confirm or decline to confirm an appointment during the regular session in which the appointment was presented is tantamount to a declination of confirmation on the day the regular session adjourns." The legislature, however, enacted HB 309; uncodified legislation clarifying that the failure to confirm or reject nominees presented during the second regular session of the Thirty-First Legislature was "'not tantamount to a declination of confirmation' until the earlier of January 18, 2021, or 30 days after either the expiration of the governor's March public health emergency order or a proclamation that a public health emergency no longer existed."

Thirty days after the expiration of the public health emergency order the legislature had not acted to "confirm or decline to confirm" the nominees, which was "tantamount to a declination of confirmation" under HB 309. The governor asserted that the appointments were still valid and that AS 39.05.080(3) and HB 309 were unconstitutional because art. III, secs. 25 and 26, of the Alaska Constitution require that the legislature affirmatively vote to reject appointments.

The Alaska Supreme Court considered the Alaska Constitution's text, which declares that appointments are "subject to confirmation by a majority of the members of the legislature in joint session." Noting that confirmation may "be

defined as the process by which an appointee is determined to be either confirmed *or* rejected," the court held that the plain text of the constitution requires the confirmation process "whether it results in confirmation or rejection — be done by joint session vote." The court then reviewed constitutional history and concluded that it supports requiring a joint session vote for both confirmation and rejection. Thus, the court held that the provisions in AS 39.05.080(3) and HB 309, providing for rejection of appointees by legislative inaction, are unconstitutional.

Dunleavy v. Alaska Legislative Council, 498 P.3d 608 (Alaska 2021).

Legislative review is recommended to amend AS 39.05.080(3) and remove the unconstitutional provision.

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

USING CORRESPONDENCE SCHOOL ALLOTMENTS FOR DISCRETE SERVICES OR MATERIALS IS LIKELY CONSTITUTIONAL; USING ALLOTMENTS FOR MOST OR ALL OF A PRIVATE SCHOOL'S TUITION IS ALMOST CERTAINLY UNCONSTITUTIONAL WHILE USING ALLOTMENTS FOR INDIVIDUAL PRIVATE SCHOOL CLASSES MAY BE CONSTITUTIONAL DEPENDING ON THE CIRCUMSTANCES; RECENT SUPREME COURT DECISIONS DO NOT INVALIDATE THE STATUTORY REQUIREMENT THAT ALLOTMENTS MAY ONLY BE USED FOR NONSECTARIAN SERVICES AND MATERIALS.

The attorney general's office addressed questions from the commissioner of education about whether (1) public correspondence school students may spend public allotments on services offered by private vendors without violating art. VII, sec. 1 of the Alaska Constitution; and (2) recent United States Supreme Court decisions on public funding for private religious education invalidates the requirement that allotments may only be used for nonsectarian purposes under AS 14.03.310.

Article IV, sec. 1 of the Alaska Constitution prohibits the state from using public funds "for the direct benefit of any religious or other private educational institution." AS 14.03.310(a) authorizes school districts to provide allotments to correspondence school students for instructional expenses.

Under AS 14.03.310(b), a student allotment may only be used to purchase "nonsectarian services and materials."

The attorney general first opined that "[u]sing public correspondence school allotments to purchase discrete services or materials is likely constitutional." The attorney general provided examples of spending that carry a lower risk of violating art. VII, sec. 1, including using allotment money to pay for high school correspondence students to attend college classes at public or private postsecondary institutions, to fund authorized private tutoring, or for extracurricular activities, and certain materials obtained from a private educational institution subject to AS 14.03.310. The attorney general next determined that "[u]sing public correspondence school allotments to pay most or all of a private educational institution's tuition is almost certainly unconstitutional." The attorney general then advised that "[u]sing allotment money for one or two classes to support a public correspondence school program is likely constitutional" as long as the classes are intended to support, rather than supplant, the child's home-based education and are not intended to provide a direct benefit to a private school. However, using allotments to attend individual private school classes is likely unconstitutional if it is "in response to a private school encouraging parents to enroll in a public correspondence school and then use public allotments to offset the cost of private tuition[.]"

The attorney general also addressed recent United States Supreme Court rulings, which held that a state may not discriminate against private religious schools if the state subsidizes other forms of private education. The attorney general found that "[t]he recent cases do not overrule the Alaska Constitution's direct benefit prohibition" or "invalidate the requirement that correspondence allotments be used only for 'nonsectarian' services and materials." Because Alaska's correspondence program is part of the public school system, the attorney general concluded that correspondence allotments are public funds used for public education, falling outside of the Court's rulings on state funding for private education.

2022 Op. Alaska Att'y Gen. (July 25).

Legislative review is not recommended.

Alaska Criminal Rule 11
AS 12.55.155

WHEN EVALUATING WHETHER TO ACCEPT OR REJECT A SENTENCING AGREEMENT, A TRIAL COURT MAY CONSIDER A NON-*BLAKELY* AGGRAVATING FACTOR AND SHOULD CONSIDER ADDITIONAL FACTORS BROUGHT TO THE COURT'S ATTENTION SUCH AS EVIDENTIARY AND WITNESS ISSUES, THE VICTIM'S WISHES, RESOURCE LIMITATIONS, AND RELEVANT CIRCUMSTANCES BEYOND THE PARTIES' CONTROL; A TRIAL COURT SHOULD PLACE ITS REASONS FOR REJECTING A SENTENCING AGREEMENT ON THE RECORD.

After indictment, a defendant entered into a plea agreement that stipulated to three aggravating factors. The superior court accepted the defendant's guilty plea and deferred sentencing. While on bail, the defendant was charged in two additional cases. The parties changed their plea agreement to resolve all three cases in a global plea agreement. At sentencing, witnesses objected to the plea agreement as too lenient. The defendant and the state defended the agreement, arguing that all three cases had evidentiary issues. The parties disagreed, however, on whether the global plea agreement included the stipulated aggravating factors from the original agreement. The superior court found that the original stipulation was not part of the new global plea agreement and granted the defendant's motion to enforce the plea agreement. The court also ruled that it had the authority to consider any non-*Blakely* aggravators established by the record in evaluating whether to accept or reject the sentencing agreement. (A non-*Blakely* aggravator is an aggravating factor based on a defendant's prior conviction that can be proved to a judge, sitting without a jury, whereas a *Blakely* aggravator is an aggravating factor that implicates the sixth amendment jury trial right and must be proved to a jury.) The court ultimately determined that two non-*Blakely* aggravators could be found and rejected the sentencing agreement as too lenient in light of those factors.

On review to the Alaska Court of Appeals, the defendant argued that a trial court has no authority to consider non-*Blakely* aggravators when evaluating a Rule 11 agreement where parties have agreed to a non-aggravated sentence. The Court of Appeals noted that while courts do not have authority to reject charge agreements, courts have authority over sentencing. The court found that for a trial court to properly evaluate the severity or leniency of a sentencing agreement as set out in Criminal Rule 11(e) the court "must know what sentencing range would apply if the agreed-upon sentence was

rejected and the parties . . . proceeded to open sentencing under the remaining terms of the agreement." The court held that a trial court may consider a non-*Blakely* aggravator when evaluating a sentencing agreement "even if the parties have specifically agreed to a sentence within the presumptive range and no aggravators have been raised and argued."

The court also held that a trial court should consider certain additional factors when making a decision to accept or reject a sentencing agreement under Criminal Rule 11(e) if the factors are brought to the court's attention, such as evidentiary and witness issues, the victim's wishes, resource limitations, and relevant circumstances beyond the parties' control. The court held that when a trial court rejects a sentencing agreement it should put its reasons for doing so on the record.

Frankson v. State, 2022 WL 4282658 (Alaska App. 2022).

Legislative review is not recommended.

AS 09.17.010

AWARDS OF DAMAGES FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CLAIMS ARE SUBJECT TO SEPARATE DAMAGES CAPS.

Mael was severely injured when a boiler exploded in a home owned by the Association of Village Council Presidents Regional Housing Authority (housing authority). Mael and his family sued the housing authority for negligence, breach of contract, and negligent infliction of emotional distress (NIED) due to Mael's family hearing the explosion and witnessing his injuries.

The jury found in favor of Mael and his family, returning over $3,000,000 in damages to Mael and $175,000 to the family members on the NIED claims. The trial court later reduced Mael's damages to $1,000,000 based on AS 09.17.010(c), which states that noneconomic damages for severe physical impairment or disfigurement "may not exceed $1,000,000 or the person's life expectancy in years multiplied by $25,000, whichever is greater." The trial court found that the NIED claims were sufficiently independent of Mael's injuries to warrant separate damages caps.

On appeal, the housing authority argued that the NIED damages should have been combined with Mael's, subjecting all awards to one, single statutory cap. Mael and his family

cross-appealed, arguing that AS 09.17.010 violated Mael's substantive due process rights because it does not adjust for inflation or the severity of Mael's injuries.

The court, noting that the statute had been upheld as constitutional in previous court decisions, rejected Mael's arguments that AS 09.17.010 is unconstitutional. The court next analyzed whether the damages awarded to Mael and the family's NIED damages arose "out of a single injury or death". The court distinguished NIED claims from derivative claims, such as loss of consortium. The court explained that derivative claims are derivative injuries that result from an injury to another, whereas "NIED involves an injury unique to the victim, separate from the witnessed injury that caused it." The court held that, "because the Mael family members' NIED claims involve injuries separate from those suffered by [Mael], each reflects a 'single injury' subject to the statutory cap . . ." a conclusion "consistent with legislative intent as well as the statutory language."

Ass'n of Vill. Council Presidents Reg'l Hous. Auth. v. Mael, et al., 507 P.3d 963 (Alaska 2022).

Legislative review is not recommended unless the legislature wishes to aggregate damages awarded to separate individuals for NIED claims under the same statutory cap.

AS 09.20.185
AS 09.55.540

AN EXPERT WITNESS MAY TESTIFY ON THE STANDARD OF CARE IN A MEDICAL MALPRACTICE CASE WITHOUT BEING BOARD-CERTIFIED IN THE EXACT AREA OF MEDICINE IN DISPUTE IF THE WITNESS HAS KNOWLEDGE DIRECTLY RELATED TO THE "UNDERLYING CIRCUMSTANCES OF THE MEDICAL EVENT OR TREATMENT GIVING RISE TO THE MEDICAL MALPRACTICE ACTION."

The estate of a decedent who died, most likely from cardiovascular disease but potentially from alcohol withdrawal, brought suit against Golden Heart Emergency Physicians (Golden Heart), a clinic that had provided medical services to the decedent shortly before his death, including a medical malpractice claim.

AS 09.55.540(a)(1) requires plaintiffs alleging medical

malpractice to prove the standard of care applicable to the defendant. AS 09.20.185(a) requires a witness seeking to provide expert testimony on the standard of care to be, in relevant part, "certified by a board recognized by the state as having acknowledged *expertise and training directly related to the particular field or matter at issue*." (Emphasis added.)

Before trial, Golden Heart moved for summary judgment, providing an affidavit from its expert (a physician certified in emergency and addiction medicine) that its physicians did not breach the standard of care. The estate opposed summary judgment with an affidavit from its expert that Golden Heart had breached the standard of care. The estate's expert was a physician board certified in psychiatry, trained in alcohol withdrawal management in medical school, and "had 'experience working in hospital emergency rooms as a physician to provide emergency room treatment for alcohol withdrawal patients . . . .'" However, the estate's expert was not an emergency room doctor or certified in emergency medicine. The superior court granted the motion for summary judgment, finding that the estate's expert was unqualified to opine on the appropriate standard of care for an emergency room physician because she was not board certified in emergency medicine.

The Alaska Supreme Court, noting that the legislative history of AS 09.20.185 indicated a desire to allow some flexibility in qualifying expert witnesses, determined that an expert witness in a medical malpractice case is not necessarily required to be board certified in the field at issue. The court held that "'matter at issue' in the medical malpractice context refers to the underlying circumstances of the medical event or treatment giving rise to the medical malpractice action. Whether an expert's training, expertise, or certification is 'directly related' therefore varies depending on the facts and circumstances of the alleged malpractice." Under this standard, the court found that the estate's expert's training and experience was sufficient for her to opine on the standard of care and reversed the superior court.

Titus v. State of Alaska, Department of Corrections, 496 P.3d 412 (Alaska 2021).

Legislative review is not recommended.

AS 11.81.330
AS 11.81.335

A DEFENDANT AUTHORIZED TO USE DEADLY FORCE IS NOT REQUIRED TO DISTINGUISH BETWEEN DIFFERENT DEGREES OF DEADLY FORCE.

A defendant was tried for first-degree murder. At trial, the defendant claimed self-defense. The jury received instructions on the law of self-defense. The trial court gave an instruction, in addition to two pattern jury instructions on self-defense, at the prosecutor's request and over the defendant's objection. This instruction, based on language taken from prior Alaska court decisions, stated "A basic tenet of the doctrine of self-defense is that [the] use of deadly force is unreasonable . . . if non-deadly force is obviously sufficient to avert the threatened harm. Even in circumstances when a person is permitted to use deadly force in self-defense[,] that person may still not be authorized to employ *all-out deadly force* because such *extreme force* is not necessary to avert the danger." (Emphasis added.) The jury rejected the self-defense claim and convicted the defendant of first degree murder.

On appeal to the Alaska Supreme Court, the defendant argued that the jury instruction improperly distinguished between deadly force and "all-out deadly force" or "extreme force." The State responded that, under AS 11.81.330 and 11.81.335, courts are required to distinguish between different degrees of deadly force. Under AS 11.81.335(a), a person may use deadly force "*when and to the extent* the person reasonably believes the use of deadly force is necessary for self-defense against death; [or] serious physical injury . . . ." (Emphasis added.) The court found that the plain language of AS 11.81.335(a) does not imply "an additional reasonable belief about the level of deadly force necessary to defend against death or serious physical injury." The court noted that the legislative history of AS 11.81.330 and 11.81.335 indicated "that the legislature meant the 'when and to the extent' language to refer to a binary distinction between deadly and nondeadly force" rather than a spectrum of degrees of deadly force. The court held that Alaska's self-defense laws only recognize the categories of nondeadly and deadly force. Because the jury instruction implied that there can be more or less deadly versions of deadly force, the instruction was in legal error.

Jones-Nelson v. State, 512 P.3d 665 (Alaska 2022).

Legislative review is not recommended.

AS 12.36.200(a)(2)

THE STATE IS NOT REQUIRED UNDER AS 12.36.200(a)(2) TO PRESERVE NON-DNA BIOLOGICAL EVIDENCE; FAILURE TO NOTIFY A DEFENDANT BEFORE CONSUMING BIOLOGICAL EVIDENCE MAY AMOUNT TO A DUE PROCESS VIOLATION.

Lee was charged with sexual abuse of a minor. During the law enforcement investigation, six penile swabs were collected from the victim and sent to the state crime lab for DNA testing. Based on the low success rate in obtaining interpretable DNA from penile swabs, and on advice from the crime lab supervisor, the forensic analysist placed all of the biological material from the swabs into two tubes for testing. Half of the DNA extract was then preserved for later independent testing and half was used to generate a DNA profile. During independent testing, the analyst was unable to conduct the requested test because all of the peripheral material containing bodily fluids had been removed during the DNA testing.

Lee filed a motion to dismiss her indictment, arguing that the state's consumption of the biological material in the testing process violated her due process right to present a defense and that the failure to preserve the original biological material on the swabs constituted a violation of the state's evidence preservation duties under AS 12.36.200(a)(2). The trial court denied the motion to dismiss and Lee was convicted at trial.

On appeal, the Alaska Court of Appeals considered the plain meaning and legislative history of AS 12.36.200(a)(2) and determined that, while there may be valid reasons to preserve non-DNA biological evidence, the statute only required preservation of DNA-related evidence. Therefore, the court held that the state's actions satisfied the statutory requirement to preserve biological material in an amount and manner sufficient to develop an independent DNA profile. The court also found that Lee's due process arguments lacked merit since the state acted reasonably given the information it had at the time of the testing and the consumed evidence was of questionable evidentiary value to the defense. While no due process violation occurred under the facts of this case, the court noted that the state crime lab's practice was "in contravention of the ABA Standards for Criminal Justice requirement to provide a defendant notice and an opportunity to object before consuming *either* 'DNA evidence or the extract from it.'" The court stated that failure to notify a defendant before destroying, exhausting, or consuming

biological evidence "could amount to a due process violation if the consumption hindered the defendant's ability to present a defense."

Lee v. State, 503 P.3d 811 (Alaska App. 2021).

Legislative review is recommended if the legislature wants to address the issue of notification to a defendant before the state destroys, exhausts, or consumes biological evidence.

AS 12.47.100(b) – (h)
AS 12.47.110(b)

A COURT HAS CONTINUING JURISDICTION OVER A DEFENDANT AFTER CHARGES ARE DISMISSED DUE TO INCOMPETENCY; THE STATE MAY REINITIATE CRIMINAL CHARGES AGAINST A DEFENDANT WHO HAS BEEN PREVIOUSLY DECLARED INCOMPETENT BEFORE A JUDICIAL DETERMINATION THAT THE DEFENDANT HAS REGAINED COMPETENCY.

A defendant was indicted for assault and attempted first-degree murder. The court found the defendant was not competent to stand trial after evaluation by a mental health professional and ordered him to undergo two subsequent 90-day commitments for treatment purposes. Following the second commitment, the court concluded there was not a substantial probability that the defendant would regain competency if he was further committed, so the state dismissed the charges without prejudice and initiated civil commitment proceedings, leading to the defendant's civil commitment under AS 47.30.700. Over a year later, the state announced it would refile the attempted murder and assault charges that had been dismissed and then, after re-initiating charges, ask the court for a new competency evaluation. The defendant argued that the government must offer new evidence to prove the defendant had become competent to stand trial before re-initiating criminal charges. The superior court rejected this argument and ruled the state could re-initiate the charges without prior judicial screening.

On review, the Alaska Court of Appeals affirmed the superior court for several reasons. First, the court found that the superior court's ruling was consistent with Alaska law allowing the state to file initial criminal charges against a mentally ill defendant. Next, the court held that, when criminal charges are dismissed due to the defendant's incompetency under AS 12.47.110(b), the superior court maintains subject matter jurisdiction over the case and personal jurisdiction over the

defendant. The court found that continuing jurisdiction is supported by (1) the dismissal of charges under AS 12.47.110(b) "without prejudice"; and (2) the policy of allowing the court and parties to utilize the detailed procedures . . . in AS 12.47.100(b) – (h)." The court noted that maintaining this jurisdiction is important because without it, "the court would have no authority to re-assess whether the defendant was competent to stand trial." Finally, the court found that the superior court's ruling resolves the issue of how to conduct any renewed litigation regarding a defendant's competency. The court acknowledged that the procedures in AS 12.47.100(b) – (h) technically only apply to the superior court's initial evaluations of a defendant's competency. However, the court concluded that the legislature assumed that renewed litigation would be conducted under the same or similar procedures. For these reasons, the court held that the state may file pleadings to re-initiate the criminal case of a defendant who has previously been found incompetent without first litigating the defendant's competency.

The defendant argued that this result raises concerns "that the state could harass a mentally ill defendant by repeatedly litigating the same dismissed charges . . . ." The court did not resolve this issue, noting that even if the court were to assume that "Alaska law should require the State to offer a reasonable basis for asking the court to re-open proceedings and re-assess the defendant's competency to stand trial . . .", that standard would have been satisfied in this case.

Victor v. State, 516 P.3d 506 (Alaska App. 2022).

Legislative review is not recommended unless the legislature wishes to (1) adopt different procedures from those set out in AS 12.47.100(b) – (h) for re-initiating charges against a defendant who has previously been found incompetent; or (2) require the state to offer a reasonable basis for asking the court to re-open proceedings and re-assess a defendant's competency to stand trial.

AS 12.55.090(f)

A COURT MAY NOT REDUCE PERIODS OF PROBATION IMPOSED PURSUANT TO A RULE 11 AGREEMENT WITHOUT CONSENT OF BOTH PARTIES.

Ray pleaded guilty to theft in the second degree under a Rule 11 plea agreement. A few months following release on probation, the state filed a petition to revoke probation. At the probation

adjudication hearing, Ray announced he wanted to reject further probation. The superior court declined Ray's request and instead imposed a sentence including suspended jail time, which left Ray on probation.

Ray argued on appeal to the Alaska Court of Appeals that the superior court erred by not honoring his request to reject further probation. "Ray relied on the court of appeals' decision in *State v. Henry*, which held that a defendant whose Rule 11 plea agreement provides for a specific period of probation has the right, when being sentenced for a subsequent probation violation, to elect to serve only active imprisonment rather than any further probation." The State argued in response that the *Henry* decision was abrogated when the legislature enacted AS 12.55.090(f). The State reasoned that because the statute limits a judge's authority to reduce a period of probation provided for in a Rule 11 agreement without the prosecutor's agreement, the statute eliminated the right of defendants to reject a previously agreed upon period of probation. The court certified the question of how to interpret AS 12.55.090(f) to the Alaska Supreme Court.

The Alaska Supreme Court first noted that prior to the enactment of AS 12.55.090(f), defendants had the right to reject probation that was provided for in a Rule 11 plea agreement. The court however found that the plain text of AS 12.55.090(f) prohibits a judge "from reducing periods of probation imposed pursuant to a Rule 11 agreement without the consent of both parties." The court stated, "[b]ecause the text of AS 12.55.090(f) makes it impossible for a defendant to exercise a right to reject probation, the text strongly suggests the legislature intended to abolish this right[.]" The court also determined that, while portions of the legislative history were ambiguous, much of the history suggests that the legislature intended to overrule *Henry* when enacting AS 12.55.090(f). Considering policy arguments, the court found that a plausible legislative purpose existed in abolishing a defendant's right to reject probation provided for in a Rule 11 agreement. The court ultimately held that a defendant may not reject probation provided for in a Rule 11 agreement unless the prosecution agrees.

Ray v. State, 513 P.3d 1026 (Alaska 2022).

Legislative review is not recommended unless the legislature wishes to allow a defendant to reject further probation provided for in a Rule 11 agreement without the consent of the prosecution.

AS 13.26.226(b)
AS 13.26.286
AS 13.26.296

WARD IS ENTITLED TO REPRESENTATION BY LEGAL COUNSEL DURING GUARDIAN RESIGNATION HEARING.

The superior court appointed the mother of a woman with mental health issues and a history of polysubstance abuse as her daughter's guardian. Years later, upon the court visitor's recommendation and with the mother's assessment that she could no longer serve as her daughter's guardian, the court allowed the resignation of the mother as the woman's guardian and appointed a public guardian. Following a brief discussion with the superior court at the hearing, the woman waived her right to counsel and agreed to the guardian change.

On appeal the Alaska Supreme Court interpreted the statute addressing guardian removal. The court noted that under AS 13.26.226(b) "[w]hen a person files a petition for appointment of a guardian for an allegedly incapacitated person, the guardianship statutes expressly provide that '[t]he respondent is entitled to be represented by an attorney in the proceeding.'" The court then explained that the statute addressing guardian resignation does not expressly address the right to counsel at a guardian resignation, but AS 13.26.286(c) requires "the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian . . . ." The court also noted the requirement to notify a ward's attorney of a hearing for guardian removal. The court found that these provisions reflect a legislative intent to grant a ward the right to counsel during proceedings on a guardian's petition to resign. The court thus concluded that a ward has the right to be represented by counsel at a guardian resignation proceeding. Because the superior court did not make sufficient findings to determine whether the woman had knowingly and voluntarily waived her right to counsel, the court reversed and remanded.

In re Amy D., 502 P.3d 5 (Alaska 2022).

Legislative review is not recommended unless the legislature does not intend to afford a ward the right to counsel during a guardian resignation hearing.

AS 15.10.090
AS 15.20.540

THE DIVISION OF ELECTIONS MUST PROVIDE ALL FORMS OF NOTICE OF A POLLING PLACE CHANGE REQUIRED UNDER AS 15.10.090 THAT ARE FEASIBLE AT THE TIME OF THE CHANGE.

The division of elections moved a precinct polling place before the 2020 primary election. The division assumed the new location would be the polling place for the 2020 general election. But less than two weeks before the general election, the division contacted the new location and learned that the owner did not want to use the location as a polling place for the district. The division confirmed a replacement polling place one week before the general election.

Under AS 15.10.090, when the location of a polling place is changed, the division must provide notice of the change (1) in writing to each affected registered voter in the precinct, whenever possible; (2) in a local newspaper or in writing "in three conspicuous places as close to the precinct as possible"; (3) on the division's website; (4) to the appropriate municipal clerks, community councils, and tribal entities; and (5) in the official election pamphlet.

To provide notice of the change the division "updated its website and polling place locator hotline to reflect the new polling place, and put up posters and A-frame signs at the old and new polling places to guide voters to the correct polling place." The division did not, however, mail notice to voters, publish notice in the election pamphlet, place an ad in the newspaper, or notify the municipal clerk of the change.

A losing candidate contested the election under AS 15.20.540. That section allows a losing candidate to contest an election in the event of "malconduct, fraud, or corruption on the part of an election official sufficient to change the result of an election." The candidate specifically complained that the division violated AS 15.10.090 by failing to provide adequate public notice of the change. The superior court dismissed the candidate's complaint regarding public notice, holding that the candidate failed to state a claim for which the court could grant relief. The court nonetheless conducted a hearing on the notice provided and concluded that the division failed to "fully comply with AS 15.10.090" but that the failure did not amount to malconduct and the candidate failed to show that the alleged "malconduct was sufficient to change the results of the election."

On appeal the Alaska Supreme Court first held that under

AS 15.20.540 there is no heightened pleading standard for election contests. Noting the different types of malconduct the court has recognized in past cases, the court "decline[d] to require plaintiffs to allege a specific type of malconduct in order to survive" a motion to dismiss. The court next explained that, despite the division's contrary assertions, both the text and legislative history of AS 15.10.090 support applying the section to temporary or last minute changes to polling places. Further analyzing AS 15.10.090 the court concluded that the section does not require the division "to timely confirm all polling place locations so as to provide as many forms of required notice as possible." Rather, the division must provide "all forms of notice listed under that statute that were feasible at the time of the polling place change . . . ." The court recognized that of the forms of notice required under AS 15.10.090, except for failure to notify the municipal clerk, the division had provided all "required notice that could reasonably have been given." The court ultimately affirmed the superior court because the division's failure to notify the municipal clerk was not a significant deviation from statutorily prescribed norms and did not introduce bias into the vote.

Pruitt v. State, 498 P.3d 591 (Alaska 2021).

Legislative review is not recommended unless the legislature wishes to require the division to confirm a polling place within a specified time before an election.

AS 23.30.175
AS 23.30.185

CALCULATING THE COMPENSATION RATE FOR OUT-OF-STATE RECIPIENTS UNDER THE ALASKA WORKERS' COMPENSATION ACT REQUIRES APPLYING THE COST OF LIVING MULTIPLIER BEFORE THE MAXIMUM COMPENSATION RATE.

An injured employee who resided out-of-state was entitled to temporary total disability compensation. Under AS 23.30.185, an injured employee is entitled to temporary total disability (TTD) benefits equal to eighty percent of an employee's spendable weekly wage, which is derived from the employee's gross weekly earnings. But TTD payments may not exceed a maximum compensation rate set under AS 23.30.175(a), calculated based on the average weekly wage in this state. For an employee who resides out-of-state, a cost of living adjustment (COLA) is applied to the employee's TTD compensation rate under AS 23.20.175(b)(1).

Eighty percent of the employee's spendable weekly wage exceeded the maximum compensation rate. The result of multiplying eighty percent of the employee's spendable weekly wage by the COLA also exceeded the maximum compensation rate. Thus, the employee claimed that he was entitled to the maximum compensation rate. But relying on the Alaska Workers' Compensation Appeals Commission (commission) decision in *Northern Construction v. James*, the employer determined the employee's TTD by first applying the maximum compensation rate and then applying the COLA to this rate. This resulted in the employee receiving approximately 72 percent of the maximum compensation rate.

The employee requested that the commission reconsider the *James* decision. After the commission did not reconsider the decision the employee appealed. On appeal to the Alaska Supreme Court, the court noted that excluding AS 23.30.175(a) from "the list of sections used to calculate an employee's compensation rate before applying the COLA" indicates "that the legislature did not intend to apply the maximum rate cap before the COLA," which the court found was supported by the legislative history from the 1988 amendments repealing and reenacting that section. After considering the statutory language in AS 23.30.175, the statute's purpose and legislative history, and policy arguments, the court reversed the commission's decision, overruled *James*, and held that the maximum compensation rate is applied before, not after, the COLA.

Roberge v. ASRC Construction Holding Co., 503 P.3d 102 (Alaska 2022).

Legislative review is not recommended unless the legislature wishes to apply the COLA after applying the maximum compensation rate.

AS 25.20.050

USING THE TERMS "MOTHER" AND "FATHER" IN AS 25.20.050, RATHER THAN GENDER NEUTRAL TERMS, MAY RAISE CONSTITUTIONAL ISSUES.

Two women, Rosemarie P. and Kelly B., lived together in a domestic partnership. Rosemarie became pregnant through the use of a sperm donor and gave birth to a child. The couple co-parented the child, but never married and Kelly never adopted the child. Rosemarie and Kelly later separated, resulting in a custody dispute. The trial court found that under

AS 25.20.050, the state's legitimation statute, Kelly was a legal parent to the child and alternatively found Kelly to be a psychological parent to the child. The trial court also found that if references to the terms "mother" and "father" in AS 25.20.050 were interpreted to exclude same-sex couples from being considered non-biological parents, then the statute was likely unconstitutional. The court awarded joint custody to Kelly and Rosemarie. Rosemarie appealed.

The Alaska Supreme Court found that the facts supported the trial court's ruling that Kelly was a psychological parent to the child and upheld the custody determination. Since the court held that Kelly was a psychological parent, the court declined to reach the trial court's findings that the legitimation statute applied to non-biological parents or that the statute's use of the terms "mother" and "father" was likely unconstitutional. The court noted that the legislature may wish to review the statute to address these constitutional concerns.

Rosemarie P. v. Kelly B., 504 P.3d 260 (Alaska 2021).

Legislative review is recommended to consider modification of the terms "mother" and "father" in AS 25.20.050.

AS 25.20.065(a)
AS 25.20.110(a)

AS 25.20.110(a) APPLIES TO MODIFICATIONS OF AN ORDER GRANTING VISITATION TO GRANDPARENTS; THE PARENTAL PREFERENCE RULE DOES NOT APPLY IN PROCEEDINGS TO MODIFY A GRANDPARENT'S VISITATION RIGHTS IF THE RULE WAS APPLIED TO THE INITIAL PROCEEDINGS ESTABLISHING THOSE RIGHTS; GRANDPARENTS ARE ENTITLED TO AN EVIDENTIARY HEARING FOR A MODIFICATION OF VISITATION RIGHTS.

The maternal grandparents of a minor child petitioned a trial court in Oregon for visitation and came to a mediated agreement for visitation with the child's mother and adoptive father, which was approved by an Oregon court in 2014. In 2018, the parents moved to Alaska and subsequently filed a motion with a trial court in Alaska to terminate the grandparents' visitation rights. The grandparents counterclaimed for modification of the order and filed a motion for enforcement of the Oregon visitation agreement.
AS 25.20.065(a) permits court-ordered visitation between a grandparent and grandchild if: "(1) the grandparent has

established or attempted to establish ongoing personal contact with the child; and (2) visitation by the grandparent is in the child's best interest." Under AS 25.20.110(a), a trial court may modify an existing visitation order if a substantial change in circumstances requires the modification and it is in the child's best interests.

The trial court found as a preliminary matter that AS 25.20.110(a) did not apply, but even if it did, the parents move to Alaska would qualify as a substantial change in circumstances. The court instead applied AS 25.20.065(a) and the parental preference rule described in a previous Alaska Supreme Court case, which requires a third party seeking visitation with a child to prove by clear and convincing evidence "that it is detrimental to the child to limit visitation with the third party to what the child's otherwise fit parents have determined to be reasonable." The court granted the parents request, finding that while the relationship between the child and the grandparents satisfied the statute's requirements, the grandparents did not prove that limiting visitation would be detrimental.

On appeal, the Alaska Supreme Court found that the trial court's application of AS 25.20.065(a) was in error, because the statute's text indicates it should apply to the establishment of visitation orders and not modification of existing orders. Instead, the court held that AS 25.20.110(a) applies to motions to modify an order granting a grandparent visitation rights. The court found that while the statute does not specifically mention grandparents, the statute is drafted broadly enough to include them, there was nothing in its history indicating the legislature intended to exclude grandparents, and the same policy considerations applied to custody and visitation by both parents and grandparents. The court also held that if parents are protected by the parental preference rule in the proceedings that resulted in the grandparents' visitation rights, the rule does not apply to proceedings to modify those rights. And because the "same important interests are at stake" regarding visitation and custody by grandparents as in other contexts in which the court found that a constitutional right to a hearing exists, the court held that the grandparents had a right to an evidentiary hearing.

Husby v. Monegan, 517 P.3d 20 (Alaska 2022).

Legislative review is not recommended.

AS 29.26.250

FOR PURPOSES OF MUNICIPAL RECALL STATUTE, A LEGALLY SUFFICIENT ALLEGATION OF MISCONDUCT IN OFFICE DOES NOT REQUIRE A SHOWING OF DISHONESTY, PRIVATE GAIN, OR IMPROPER MOTIVE.

An individual applied for a petition to recall a municipal assembly member, alleging misconduct in office by knowingly violating a municipal executive order. Under AS 29.26.250, misconduct in office is one of three grounds for recall of a municipal official. The municipal clerk denied the application as legally insufficient, relying on the definition of official misconduct in a recently published edition of Black's Law Dictionary and concluding that misconduct in office requires a showing of "dishonesty, private gain, or improper motive."

On appeal the Alaska Supreme Court held that official misconduct for purposes of the municipal recall statute does not require a showing of "dishonesty, private gain, or improper motive." Recall statutes are liberally construed. Additionally, the definition of official misconduct in the most recent edition of Black's Law Dictionary at the time the legislature enacted the municipal recall statutes included "[a]ny unlawful behavior by a public officer in relation to the duties of his office, willful in character" and did not expressly require "dishonesty, private gain or improper motive." Thus, the court held that the allegation of a knowing violation of municipal law related to the municipal official's duties was sufficient to support the recall application.

Jones v. Biggs, 508 P.3d 1121 (Alaska 2022).

Legislative review is not recommended unless the legislature wishes to define misconduct in office for the municipal recall statutes.

AS 33.16.270

A PAROLEE IS ONLY ENTITLED TO EARNED COMPLIANCE CREDITS UNDER AS 33.16.270 FOR PERIODS OF COMPLIANCE THAT OCCURRED ON OR AFTER JANUARY 1, 2017.

AS 33.16.270, as enacted in 2016, granted a 30-day reduction in a parolee's period of supervision for each 30-day period where the parolee was in compliance with the conditions of parole (earned compliance credit). The applicability provision for AS 33.16.270 provided that the earned compliance credit

program applies "to parole granted before, on, or after" January 1, 2017.

The Court of Appeals first noted that it is clear that the statute applies to *terms of parole* granted before January 1, 2017. The appellant argued that the statute also applied retroactively to *periods of compliance* before January 1, 2017. The court, while noting that the applicability provision was facially ambiguous, ultimately disagreed with the appellant and held that "the parole earned-compliance credits program only applies to time spent on parole" on or after January 1, 2017. In reaching this conclusion, the court noted that the discussion in the legislative history focused on whether the earned compliance credits should apply only to individuals granted parole on or after the effective date, or also to individuals granted parole before the effective date. Nothing in the legislative history demonstrated that the legislature discussed or approved granting the credits for past conduct. The court also found that the legislature's clarification in 2017 that "[n]othing in the provisions of AS 33.16.270 may be construed as applying to credit for time served on parole before January 1, 2017", while not binding, supported that conclusion. The court noted granting earned compliance credits for time served before January 1, 2017, would not promote the policy goal of incentivizing good behavior since parolees in the past could not change their behavior based on a program that did not yet exist. The court further doubted that the legislature intended to enact an arbitrary program where a parolee's entitlement to earned compliance credits would rely on their parole officer's record-keeping process, since there was no requirement to keep sufficiently detailed records prior to the implementation of the earned compliance credit program.

Mosquito v. State, 504 P.3d 918 (Alaska App. 2022).

Legislative review is not recommended.

AS 43.20.145(a)(5)

REQUIREMENT FOR CORPORATE TAXPAYER TO INCLUDE CERTAIN FOREIGN CORPORATIONS AFFILIATED WITH THE TAXPAYER IN THE TAXPAYER'S STATE INCOME TAX RETURN IS CONSTITUTIONAL UNDER THE COMMERCE CLAUSE AND THE DUE PROCESS CLAUSE.

The Alaska Department of Revenue (DOR) audited Nabors International Finance, Inc. (Nabors), a non-resident

corporation that does business in the state, and found it had not reported the profits of some of its international affiliates as required under AS 43.20.145(a)(5). That statute specifically requires a return to include affiliated corporations incorporated in or doing business in low-tax countries if "(A) 50 percent or more of the sales, purchases, or payments of income or expenses . . . of the corporation are made . . . to one or more members of a group of corporations filing under the water's edge combined reporting method; (B) the corporation does not conduct significant economic activity."

On appeal to the Alaska Supreme Court, Nabors argued that the statute violated the Commerce Clause by discriminating against foreign commerce based on countries' corporate income tax rates. Nabors also argued that it violated the Due Process Clause by being (1) arbitrary and irrational; and (2) void for vagueness due to a missing conjunction between subparagraph (A) and (B) of the statute, resulting in insufficient notice of the information their tax return was required to include.

The Alaska Supreme Court, using the more-lenient standard applicable to civil economic statutes, found that there was no evidence that the DOR was arbitrarily enforcing AS 43.20.145(a)(5), Nabors had notice of how the DOR planned to interpret the statute, and the statute could be interpreted during the adjudication process despite the missing conjunction between subparagraphs (A) and (B). Specifically, the court found that a disjunctive "or" was a permissible interpretation of the conjunction between subparagraphs (A) and (B) based on the statute's language, legislative history, and purpose. For these reasons, the court found that AS 43.20.145(a)(5) was not unconstitutionally vague under the due process clause. The court further held that AS 43.20.145(a)(5) did not violate the commerce clause because it was not facially discriminatory and was not clearly excessive and did not violate substantive due process since the statute was not unconstitutionally arbitrary or irrational.

Department of Revenue v. Nabors International Finance, Inc., 514 P.3d 893 (Alaska 2022).

Legislative review is not recommended unless the legislature wishes to add a conjunctive "and" between AS 43.20.145(a)(5)(A) and (B).

AS 44.21.410(a)(4)

COUNSEL PROVIDED THROUGH ALASKA LEGAL SERVICES CORPORATION'S PRO BONO PROGRAM IS COUNSEL "PROVIDED BY A PUBLIC AGENCY."

A private attorney volunteering through the Alaska Legal Services Corporation's (ALSC) pro bono program represented a mother in a divorce and child custody dispute. The father filed a motion for assistance of counsel, arguing that since the mother was represented by an attorney provided by ALSC, he was entitled to appointed counsel. The superior court granted the motion and ordered OPA to designate counsel to assist the father. OPA moved to vacate the appointment, arguing that because the mother was represented by a private attorney working through the pro bono program, the father was not entitled to representation. The superior court denied OPA's motion to vacate. OPA petitioned the Alaska Supreme Court for interlocutory review, which was granted.

On review, the Alaska Supreme Court considered a previous Alaska Supreme Court decision, which held that indigent parents in custody cases have a due process right to appointed counsel when the other parent is represented by ALSC. The court noted that AS 44.21.410(a)(4), which requires OPA to provide legal representation to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, appeared to be derived from the previous court decision. OPA argued that pro bono attorneys are only loosely associated with ALSC and do not qualify as counsel provided by a public agency. ALSC responded that staff attorneys and pro bono attorneys serve the same function and receive the same resources from ALSC, aside from a salary, and therefore are provided by ALSC. The court found that ALSC uses public funds to provide pro bono attorneys with training, malpractice insurance, office services, and office space to meet with clients. The court held that because the pro bono program was supported by public funding, the mother's attorney was "provided by a public agency," and the father was entitled to appointed counsel.

Matter of Off. of Pub. Advocacy, 514 P.3d 1281 (Alaska 2022).

Legislative review is not recommended.

AS 47.10.011(7)

EVIDENCE THAT A PERSON IS UNDER INVESTIGATION FOR SEXUAL ABUSE OF A MINOR IS GIVEN EQUAL WEIGHT AS A CONVICTION WHEN APPLYING THE PRESUMPTION THAT A CHILD IS AT SUBSTANTIAL RISK OF ABUSE; ONCE THE PRESUMPTION IS ESTABLISHED, THE BURDEN OF PROOF DOES NOT SHIFT TO A PARENT TO PROVE THEIR CHILD WAS NOT AT SUBSTANTIAL RISK OF ABUSE.

OCS filed a petition requesting a trial court finding a child to be a child in need of aid after discovering that the child was left with her mother's boyfriend who had been indicted for sexual abuse of a minor other than the child.

Under AS 47.10.011(7) and AS 47.10.080(c) and (f), OCS may take custody of a child if they are at substantial risk of sexual abuse. AS 47.10.011(7) states that it is prima facie evidence of a substantial risk of sexual abuse if a parent left their child with a person they knew was convicted of "or under investigation for a sex offense against a minor". At trial, the mother argued that while her boyfriend's indictments were sufficient to trigger the presumption found in AS 47.10.011(7), the trial court should consider an indictment as weaker proof than a conviction and that the court should have made findings about the likelihood that the abuse being investigated had occurred. OCS argued that the statute did not require the trial court to draw such distinctions between the types of evidence that trigger the presumption, and that because the presumption had been triggered, the trial court should shift the burden to the mother to show that the child was not at substantial risk of sexual abuse. The superior court found that the child was at substantial risk of sexual abuse and was a child in need of aid, and granted custody to OCS.

On appeal, the Alaska Supreme Court affirmed the trial court's rulings: it determined that the existence of an investigation for child sexual abuse was sufficient to apply the presumption found in AS 47.10.011(7), and that the court was not required to weigh an indictment's probative value against that of a criminal conviction. Additionally, because the statute did not expressly require it, the trial court was not required to make findings about the credibility of the abuse allegations being investigated. The court disagreed with OCS that the presumption shifted the burden of proof to a parent; instead, the court found that once sufficient contrary evidence was presented, the presumption would "vanish," requiring the trial court to make a factual determination of whether substantial

risk existed. The court affirmed the trial court's finding that the child was a child in need of aid.

Cynthia W. v. Dep't of Health & Soc. Services, Office of Children's Services, 497 P.3d 981 (Alaska 2021).

Legislative review is not recommended.

AS 47.30.690

OCS IS NOT A PARENT OR GUARDIAN OF A MINOR FOR PURPOSES OF VOLUNTARILY COMMITTING THE MINOR UNDER AS 47.30.690.

A minor in the custody of the Office of Children's Services (OCS), was brought to a hospital for mental health treatment. A social worker petitioned the superior court to have the minor involuntarily committed to a psychiatric facility for evaluation.

Under AS 47.30.700 – 47.30.815, a person committed involuntarily is entitled to certain procedural rights, including a probable cause determination within 48 hours to hospitalize the person for evaluation, the right to a 30-day commitment hearing if the commitment will last past the 72-hour evaluation period, and a jury trial if committed more than 30 days. Voluntary commitments are governed under AS 47.30.670 – 47.30.695. Under the parental admission statute, AS 47.30.690, a minor is considered voluntarily admitted with the consent of "the minor's parent or guardian."

The trial court granted the order authorizing hospitalization for evaluation. However, before a 30-day involuntary commitment hearing occurred, OCS notified the court that it consented to an additional 30 days of treatment as the child's guardian, negating the hearing requirement. Almost 30 days after initial hospitalization, the trial court held a hearing and found the minor's first 30-day commitment was voluntary under the parental admission statute and that her continued commitment would be considered under the involuntary commitment statutes. The court found that the minor could be involuntarily committed for an additional 30 days before a jury trial was required.

On appeal, the Alaska Supreme Court considered the relevant definitions of "parent" and "guardian" in the CINA statutes and found that the plain language of those definitions only apply to "biological or adoptive parents" or "natural persons"

and therefore did not include OCS. Further, the statute granting OCS its authority differentiates between the department and the child's parent or guardian. Since nothing in AS 47.30.690 indicates differently, the court held that OCS did not qualify as a "parent" or "guardian" that could voluntarily commit a child in its charge. Because the minor's commitment was involuntary, the court determined that she was entitled to additional rights under the involuntary commitment statutes, including a jury trial, before further commitment.

Matter of April S., 499 P.3d 1011 (Alaska 2021).

Legislative review is not recommended unless the legislature wishes to allow OCS to voluntarily commit a child under its custody under AS 47.30.690.

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