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HB
8

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/~~17~~14/77

The meeting was called to order by Chairman Gardiner at 7:00p.m.
Present were: Chairman Gardiner
Vice - Chairman Miles
Rep. Brown
Rep. Specking
Rep. Dankworth

Absent were:

Rep. Eliason
Rep. Rudd

The Committee first took up the salary commission report and heard testimony from Kay Deeble of the Salary Commission. Ms. Deeble briefly went over parts of the report, dealing with the executive and judicial catagories and discussed the three major aspects of legislative provisions dealing with salary, per dium, and vouchers. Ms. Deeble was questioned by the Committee and other Legislators and observes at the meeting regarding specific methods by which they arrived at the per dium recommendation and the vouchery recommendations.

The Committee then heard from LAA Attorney, Dick Bradley, regarding a request that had been made by Chairman Gardiner for a legal opinion dealing with aspects of the Salary Commission report. A three page memo was handed out to the Committee members prior to the meeting in the full report had not been typed as of the time of the meeting but Mr. Bradley gave an oral presentation.

Rep. Swanson testified briefly on HB 8 which would repeal the salary commission and the salary commission recommendations.

Speaker Malone testified on HB 8 and HB 274,275,276,277,278 & 279. Malone testified in favor of repealing the salary commission report with respect to legislative compensation or taking the legislative compensation out of the preview of the salary commission.

Rep. Parr testified in favor of amending the existing law governoring the salary commission but basicly letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.'

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

HB

17

To members of the Judiciary Committee

Capitol Rm 122

League of Women Voters of Alaska

cs The League of Women Voters of Alaska wishes to go on record in support of HB 17 relating to security deposits and prepaid rent. The League has been a strong backer of fair housing laws and has established a statewide position after careful study.

Basically the League supports programs and policies to provide equal opportunity for access to housing without discrimination based on race, color, religion, or national origins. In addition, League members agree that work to promote fair housing and an adequate supply of housing for low income families must proceed hand-in-hand. Tenants' Rights is one on our goals in the work of promoting fair housing with a uniform landlord-tenant act important in achieving this goal.

Specifically, House Bill No. 17 meets our criteria set out in our state position on Landlord-Tenant Relationships:

- --it specifies the landlord's obligation in maintaining a fit and habitable dwelling;
- --it specifies tenants' obligations in maintaining a fit and habitable dwelling; and
- --it specifies the amount a landlord may collect as a security deposit.

We urge that consideration be given this bill so that passage may take place this session.

Sincerely,

Susan R. Clark

Susan R. Clark
Human Resources Lobbiest

1109 C Street
Juneau, Ak. 99801
586-6952

HB

43

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

February 9, 1977

Hon. Terry Gardiner, Chairman
House Judiciary Committee
Tenth State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 43; HB 148

Dear Representative Gardiner:

The following are comments on behalf of the Attorney General's Office on the referenced bill.

1. As a general rule the Attorney General's Office will be in court, even on small claims matters should this bill pass, on the request of the judge. We do not foresee a major impact on the Attorney General's Office, either financially or in terms of the time required to cover matters that may be brought in the future as small claims.

2. It appears unlikely that monetary claims against the State of a contractual nature can be brought as small claims. AS 44.77 and the Administrative Procedures Act in conjunction with Appellate Rule 45 both require that claims of this type first be processed administratively, with the right of appeal being from the administrative determination to the superior court.

3. The court rules have worked substantial changes in the statutory small claims procedure. AS 22.15.040 states that the court "shall hear" the matter as a small claim unless there is an "important or unusual" rule of law involved, whereas the rule provides that the small claims procedure shall be followed when all parties elect, or there are "important or difficult questions of law or fact." The Attorney General's Office supports the rule in its present form.

4. The bill provides for service as usual on the Attorney General's Office. The Attorney General's Office strongly supports this provision of the bill. Please note that there is a typographical error in the bill: The reference in section 3 to Civil Rule 4(c)(7) and (8) should

refer to Civil Rule 4(d) (7) and (8).

5. Civil Rule 12(a) presently grants to the State 40 days within which to respond to a complaint. District Court Rule 13, which sets forth small claims procedure, allows 20 days. Since at present the small claims procedure does not apply to claims against the State, there is no provision in the small claims rules allowing 40 days to the State to answer a complaint. There are very sound reasons for allowing the State 40 days to answer, and the Attorney General's Office advocates continuation of the present allowance in the rules. The Attorney General's Office proposes that the bill incorporate the following additional provision:

> District Court Civil Rule 13(a) is amended to read: The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim within 40 days after the service upon the attorney general of the pleading in which the claim is asserted.

I am sure you are aware also of HB 148, which proposes to amend AS 22.15.040 so as to increase the jurisdictional amount for small claims from $1,000 to $2,000. The same comments above apply to this bill as well.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: William T. Council
Assistant Attorney General

WTC:chp

House Jud. for members at request of Rep. Brown

HB43 by Brown, Gardiner & Miller - Jurisdiction of District Courts

Recommend: Do not pass as submitted.

Reason: It appears unfair and inconsistent to permit district judges and magistrates to hear only "small claims" against the State and not other cases within the jurisdiction of the District Court. It also seems unfair for the State to be able to file claims against individuals and corporations in the District Court but to prohibit individuals and corporations from filing claims in the District Court. We believe that it should be reciprocal - both sides should be permitted to file or both sides should be prohibited from filing any case where the State is a party.

Technical objection: It appears line 28 of the bill should be corrected to read, "Civil Rule 4 (d) (7) and (8)".

People who are involved in small claim cases may have problems with the rules of "service of process" on the State.

HB46 by Rudd, Specking, Brown, Eliason, Miles & Gardiner - Sale of Intoxicating Liquor

Recommend: Do not pass.

Reason: This bill would decrease notice to interested parties who may desire to object or protest the issuance, renewal or transfer of a liquor license.

SB11 by Orsini - Service of civil process by Alaska State Troopers

Recommend: Do not pass!

Reason: We most strongly oppose the passage of this bill. It would make it extremely difficult to serve process in civil cases. The validity of service in many "bush cases" would be challenged and in many cases the cost of service would become prohibitive. Under the terms of the bill the state troopers are not even required to assist persons appointed to serve civil process when that person encounters physical resistance or obstruction, although they may do so.

HB

62

Introduced: 1/17/77
Referred: Resources and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 62

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the boards of fisheries and game."

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

* Section 1. AS 16.05.221 is amended by adding a new subsection to read:

(c) Subject to AS 39.05.060(c)(6), regarding initial appointments, terms of members of the boards of fisheries and game are four years.

* Sec. 2. AS 16.05.260 is repealed and re-enacted to read:

Sec. 16.05.260. ADVISORY COMMITTEES. (a) The boards, in joint session, may adopt regulations they consider advisable in accordance with the Administrative Procedure Act (AS 44.62) establishing, at places in the state designated by the boards, advisory committees to be composed of persons well informed as to the fish and game resources of the locality. The boards shall set the number and terms of each of the members of the advisory committees, designate one member of each committee as chairman, and give him authority to hold public hearings on fish and game matters.

(b) Recommendations from the advisory committees shall be forwarded to the appropriate board for its consideration, but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee, it shall insure that the formal record of the meeting reflects the reasons for that decision and shall provide minutes of the meeting to the advisory committee.

phone poll Board for Advisory committee request

(c) Advisory committees may make emergency closures during established seasons if advance approval of what is obtained from the appropriate board. Exercise of this authority is contingent upon the adoption of regulations by joint action of the Board of Fisheries and the Board of Game establishing areas of advisory committee jurisdiction, procedures governing emergency closures by a committee, and other necessary limitations.

* Sec. 3. AS 16.05.315 is amended to read:

Sec. 16.05.315. JOINT BOARD MEETINGS. The boards of fisheries and game shall [MAY] hold a joint meeting upon the call of the commissioner or a board and shall [TO] resolve any conflicts in regulations of the boards or any other matters [AND TO CONSIDER MATTERS], as determined by the commissioner or a board, which require the action [CONSIDERATION] of both boards.

* Sec. 4. AS 16.05.320 is amended to read:

Sec. 16.05.320. QUORUM. (a) A majority of the members of a board constitutes a quorum for the transaction of any business, for the performance of any duty, and for the exercise of any power. However, a majority of the full board membership is required to carry all motions, regulations, [AND] resolutions, and delegations of authority.

(b) A majority of the members of each of the boards of fisheries and game constitutes a quorum for the transaction of any business, for the performance of any duty, and for the exercise of any power in a joint board meeting. A majority of the full board membership of each of the boards is required to carry all joint motions, regulations, [AND] resolutions and delegations of authority of the boards.

02-001B

STATE of ALASKA

MEMORANDUM

TO: Rep. Keith Specking
Alaska State Legislature

DATE : 2/23

FROM: Jeff Haynes
Department of Law

SUBJECT: Proposed CSHB 62

Thank you for the opportunity to review your proposed CSHB 62 relating to the Boards of Fisheries and Game and to fish and game advisory committees. I would offer the following comments.

1. The proposed bill would require that at least one committee be established in each game management unit (GMU). First, it may be difficult to obtain a sufficient number of interested persons in some units to form an advisory committee. Second, orienting fish and game advisory committees and their establishment to GMUs may appear to some to deemphasize their responsibility to advise on fisheries matters.

2. The system you propose for creation of advisory committees may have some drawbacks if the intent is to make the committees more representative of the overall public interest. With new members elected at an open meeting of residents of the area, membership would tend to reflect only the largest interest groups capable of insuring a large turnout at election meetings. In remote areas, the makeup of the committee might depend on the vagaries of sparse attendance or a collection of voters which did not represent the range of interest groups in the area. Subsection (b) would provide some opportunity for representation of groups which were excluded from the one required committee if the election of members was by some other means; however, by a general vote of attending area residents, the same large interest groups which could control membership on the required committee could stack the petitioned committee with their representatives as well.

3. Under the present system, the boards select the first five members of each committee; those five may then elect up to ten more, all of which must be confirmed by the boards. There are advantages to board approval of members; for example, the boards will not confirm or select members who have committed a serious fish and game violation in the recent past. It is also within the power of the boards to provide for advisory committee membership which represents a broad range of interests; however, there is not much in the way of a statutory directive to this effect at the present time. Consequently, you may wish to consider this approach rather than to attempt to obtain more democratic representation through a process.

4. In subsection (a), all regulations (including procedural) should be under the APA process.

5. Subsection (c) does not pick up the amendment approved in the Judiciary Committee relating to the submission of board meeting minutes to advisory committees.

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "a board" for "the board" twice, inserted "$100," and deleted "allowed by law" following "per diem."

Sec. 16.05.300. Board meetings. (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

(b) In addition, the Board of Fisheries shall hold at least one meeting ~~or hearing~~ a year in each of the following general areas:

(1) Upper Yukon — Kuskokwim — Arctic
(2) Western Alaska (including Kodiak)
(3) Southcentral
~~(4) Prince William Sound (including Yakutat)~~
(5) Southeast. (§ 9 art I ch 94 SLA 1959; am § 1 ch 82 SLA 1968; am § 7 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, designated the provisions of this section as subsection (a), substituted "Each board" for "The board" at the beginning of the first, second and third sentences of that subsection, and added subsection (b).

Sec. 16.05.305. Clerical assistance for boards. The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board. (§ 8 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Sec. 16.05.310. Special board meetings. A board may meet at any time upon the call of the commissioner or upon the request of two board members. (§ 6 art I ch 94 SLA 1959; am § 9 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "A board" for "The board" at the beginning of the section.

Sec. 16.05.315. Joint board meetings. The boards of fisheries and game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, which require the consideration of both boards. (§ 10 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Original sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 62

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the boards of fisheries and game."

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

* Section 1. It is the intent of sec. 3 of this Act to create a system of statewide advisory committees that reflects, to the maximum extent possible, the views of residents knowledgeable about the resources of a particular locality. By receiving meaningful public contributions from those often closest to the problems of an area, the boards of fisheries and game will be better equipped to manage all fish and wildlife resources which are of inestimable value to the state and its citizens.

* Sec. 2. AS 16.05.221 is amended by adding a new subsection to read:

(c) Subject to AS 39.05.060(c)(6), regarding initial appointments, terms of members of the boards of fisheries and game are four years.

* Sec. 3. AS 16.05.260 is repealed and re-enacted to read:

Sec. 16.05.260. ADVISORY COMMITTEES. (a) The boards, in joint session, shall adopt regulations they consider advisable in accordance with the Administrative Procedure Act (AS 44.62) establishing at least one advisory committee for each game management unit in the state and other advisory committees considered appropriate, at specific locations designated by the boards. Advisory committees shall be composed of persons well informed as to the fish and game resources of the locality. After the effective date of this Act, new advisory committee members shall be elected from interested persons present at a meeting convened for that purpose, by a majority vote of non-advisory committee members present at the meeting who are residents of the game management unit in

which the committee is established. Terms of members shall be established in the same manner, by majority vote. The boards, jointly, shall adopt necessary procedural regulations to implement this subsection.

(b) Additional advisory committees may be established for a game management unit under (c) of this section upon the signed petition to a board of 25 or more persons residing in a game management unit. The petition shall specify the location for committee establishment. The terms and election of members of advisory committees formed by petition shall be established by interested residents of the game management unit in which the committee is to be established, at an initial formation meeting, according to procedures established by board regulation. Advisory committees are authorized to hold public hearings on fish and game matters.

(c) Recommendations from the advisory committees shall be forwarded to the appropriate board for its consideration, but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee, it shall insure that the formal record of the meeting reflects the reasons for that decision and shall provide minutes of the meeting to the advisory committee.

(d) Advisory committees may make emergency closures during established seasons if advance approval is obtained from the appropriate board. Exercise of this authority is contingent upon the adoption of regulations by joint action of the Board of Fisheries and the Board of Game establishing areas of advisory committee jurisdiction, procedures governing emergency closures by a committee, and other necessary limitations.

* Sec. 4. AS 16.05.315 is amended to read:

Sec. 16.05.315. JOINT BOARD MEETINGS. The boards of fisheries and game <u>shall</u> [MAY] hold a joint meeting upon the call of the commissioner

or a board and shall [TO] resolve any conflicts in regulations of the boards or any other matters [AND TO CONSIDER MATTERS], as determined by the commissioner or a board, which require the action [CONSIDERATION] of both boards.

* Sec. 5. AS 16.05.320 is amended to read:

Sec. 16.05.320. QUORUM. (a) A majority of the members of a board constitutes a quorum for the transaction of any business, for the performance of any duty, and for the exercise of any power. However, a majority of the full board membership is required to carry all motions, regulations, [AND] resolutions, and delegations of authority.

(b) A majority of the members of each of the boards of fisheries and game constitutes a quorum for the transaction of any business, for the performance of any duty, and for the exercise of any power in a joint board meeting. A majority of the full board membership of each of the boards is required to carry all joint motions, regulations, [AND] resolutions and delegations of authority of the boards.

David Namoloak - Togiak
Game Unit 17

Walrus - Marine Mammal Act

Walrus Is Big studies on Walrus Ecosystem

No Open season in 17

Other Regions have open seasons

1974 - hunting party to Walrus Is

Nunhagak Advisory Board

March 29, - Game Board Meeting

Phil Smith - Rural Cap

Support Speaking's effort generally

1. Abolish Advisory Bd

2. Establish Regional Bd — Powers + Duties
   A. hire + fire staff

3. Escape Clause — to over-rule Regional Bd

4. New Boundaries + REAA + Boroughs

5. Advisory Committees that might be joint between 2 Reg Boards

6. Funding of Boards

7. Make-up of Boards
   Elect Members by Public

Franks Woods — New Stuyahok

(1.) No funding for Local Advisory Committees
To meet in rural areas

(2) Village representative

(3.) Making regulations based on People Moving in as opposed to People Living here

Reintroduced

HB67...

January 14, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to make corrections to AS 16 which are necessary because of defects or oversights in ch. 206 SLA 1975, which split the Board of Fish and Game into separate Boards of Fisheries and Game. Failure to adopt these changes will very seriously jeopardize the future viability of the split-board arrangement, with the likelihood of concurrent adverse consequences on conservation and management of fish and game resources of Alaska.

Section 1. Section 36, ch. 206 SLA 1975 (the split-board Act), which added AS 39.05.060(c)(6), provided for initial staggered terms for members of the Boards of Fisheries and Game. However, sec. 40 of that Act repealed AS 16.05.230, which set the term of members of the Board of Fish and Game at four years. Unless a correction is made, there will be no statutory specification of the length of terms for members of the Boards of Fisheries and Game after the initial staggered-term period has concluded. The amendment contained in sec. 1 of this bill would reinstitute the previous system of four-year terms for board members.

Section 2. This section of the bill would make alterations to AS 16.05.260, as amended by the split-board Act, which pertains to advisory committees.

Subsection (a) would clarify an ambiguity in sec. 260 as to whether there will be independent advisory committees dealing with fish or game (but not both) and reporting only to one of the boards, or whether the previous system of combined fish and game advisory committees is to be retained. This amendment would insure that the prior system is continued.

Subsection (b) would alter the manner in which advisory committees interact with the boards. Before enactment of the split-board law, advisory committees were only required to make their recommendations to the Board of Fish and Game, and the board itself was under no duty to respond to those recommendations. Under the split-board law, however, if a board chooses not to follow the recommendation of the local advisory committee, the appropriate board must inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. Such a requirement must be realistic and practical in terms of the customary operating procedures and capabilities of the boards. At the present time, there are over 50 local advisory committees, any one of which may make dozens of recommendations at any given board meeting. In areas where advisory committees are concentrated, more than one advisory committee may venture an opinion on a particular proposal. Declaring that a board must "inform" each committee of the nature of its actions creates a monumental clerical task which the boards and the department are ill equippped to handle.

An equally troublesome aspect of the 1975 law is the requirement that the board "state the reasons for not following the recommendations." On a seven-member board, individual members may have differing reasons for rejecting a position taken by an advisory committee.

Therefore, the alteration proposed in this bill would simply require that the formal record of the board meeting reflect the reasons for rejecting an advisory committee recommendation.

Subsection (c) addresses the question of advisory committee closures of established seasons. This power existed under the pre-1975 AS 16.05.260. However, the split-board Act removed the commissioner's ability to override a closure order issued by an advisory committee. By eliminating this safeguard, the current provision is probably an unconstitutional delegation of the regulatory powers of the legislature to what amounts to a private party. Although there are many constitutional questions surrounding delegations of power and the law is not often clear on the subject, the courts of many states have frowned upon delegations to a nongovernmental body of the power to impose regulations carrying criminal penalties for violations

where there is no ability by a governmental agency to review and, if necessary, reject the action of the private entity. The proposed amendment would more-or-less return to the approach contained in the original sec. 260 except that the appropriate board (rather than the commissioner) would be empowered to disapprove an emergency closure. An additional change would insure that both boards, in joint session, would make the rules governing the closures, so as to be consistent with the clarification presented in subsection (a) of this section in the bill that advisory committees will continue to be combined fish and game committees.

Section 3. It is anticipated that there will be a number of situations in which the boards should hold joint meetings, including conflicts between regulations, differences in policy, differences in direction to the department, and situations where AS 16 requires that action be taken by both boards. Unfortunately, AS 16.05.315, as enacted by the split-board Act, places the boards under no statutory obligation to resolve their differences. Moreover, when the boards are not in session, it places the department in the position of having to absorb the criticism for non-action when the department has no legal authority to take action. If the boards are to be vested with the rulemaking authority over fish and game resources, then the law should clearly place upon them the burden to resolve matters which require their joint consideration. Section 3 of the attached bill would help solve these problems by requiring joint meetings and resolution of conflicts. Since the number of occasions where joint meetings will be necessary is expected to increase rather than decrease, it is important that this change be effected immediately.

Joint Meetings

Section 4. A further problem in the split-board Act concerns quorums necessary for action at joint board meetings. AS 16.05.320, as amended in 1975, refers only to a "majority of the membership of the boards" as being required for a joint board decision. It provides no clue as to whether this means any eight board members (regardless of which board they belong to) or whether it demands concurrence from the majority of the membership of each board (four from one and four from the other). Since joint board meetings are for the purpose of providing for joint board action on matters of concern to both boards, it would appear necessary and proper to require that a majority of both boards concur in any decision reached, and the proposed

Sanctions existing Procedure

amendment so provides. In addition, the amendment includes specific reference in the quorum section to delegations of authority (regarding the procedure authorized in AS 16.05.270) in order to make certain that a majority of the full membership of a board is required to make a delegation.

Sincerely,

Jay S. Hammond
Governor

In addition, the Board of Fisheries shall hold at least one meeting annually in each of the following general areas:

1) Upper Yukon - Kuskokwim - Arctic

2) Western Alaska (including Kodiak)

3) Southcentral and Prince William Sound

4) Southeast.

At least a majority of the full membership of the board shall be present at each meeting. Consideration of regulations pertaining specifically to any of the above areas shall be undertaken at the meeting held in that area.

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "a board" for "the board" twice, inserted "$100," and deleted "allowed by law" following "per diem."

Sec. 16.05.300. Board meetings. (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

(b) In addition, the Board of Fisheries shall hold at least one meeting or hearing a year in each of the following general areas:

(1) Upper Yukon — Kuskokwim — Arctic

(2) Western Alaska (including Kodiak)

(3) Southcentral

(4) Prince William Sound (including Yakutat)

(5) Southeast. (§ 9 art I ch 94 SLA 1959; am § 1 ch 82 SLA 1968; am § 7 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, designated the provisions of this section as subsection (a), substituted "Each board" for "The board" at the beginning of the first, second and third sentences of that subsection, and added subsection (b).

Sec. 16.05.305. Clerical assistance for boards. The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board. (§ 8 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

Sec. 16.05.310. Special board meetings. A board may meet at any time upon the call of the commissioner or upon the request of two board members. (§ 6 art I ch 94 SLA 1959; am § 9 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "A board" for "The board" at the beginning of the section.

Sec. 16.05.315. Joint board meetings. The boards of fisheries and game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, which require the consideration of both boards. (§ 10 ch 206 SLA 1975)

Effective date. — Section 42, ch. 206, SLA 1975, provides: "This Act takes effect July 1, 1975."

House Judiciary
February 23, 1977

The meeting was called to order at 7 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Miles, Specking, Rudd and Brown. Mr. Elaison was absent.

HB 67 Uniform Land Sale Act HB 67

Mr. Dankworth mentioned that he had heard from the Anchorage realtors that they don't necessarily go along with the offered amendments #1 and #2. In protecting them, these amendments don't really change the bill. There was some discussion about this, after which the two amendments were adopted by the committee.(Amendments proposed by the Dept. of Commerce and Econ.Dev.)

Mr. Specking moved that the bill be moved out of committee. There was one objection, but the motion carried and the bill was moved out of committee

HB 187 Liens for towing and storage of motor vehicles HB 187

Larry Veneble, from the Alaska Carriers Association, was here to testify in favor of the bill. He suggested that the committee amend the bill to illiminate the fixed charge of $1.50 per day. He also suggested that section 2 be deleted.

Following a brief discussion, Mrs. Rudd moved that sections 2 and 3 be deleted. The motion carried.

Mr. Brown moved that the bill be moved out of committee. The bill will be moved out after the committee substitute has been drafted.

HB 112 Appropriation for capital improvements within the court system HB 112

Mr. Brown suggested that the amount on line 14 be reduced to $60,000. He felt that the Finanace Committee would then reduce this figure even further. There was a motion made to this effect.

Mrs. Rudd requested that the bill include a committee report to explain that it is the committee's intent that the site selection committee's funds come out of the $60,000.

Mr. Brown moved that the bill be moved out of committee. The motion did not carry. Mr. Dankworth was especially highly opposed to the bill. A somewhat heated discussion followed. The bill was tabled until further notice.

HB 62 Boards of fisheries and game HB 62

Phil Smith, Executive Director of the Rural Alaska Community Action Program (Rural CAP), was here to testify. He endorsed the CS for HB 62. He suggested that perhaps the powers of the advisory boards should be seperate:

1. Boards should continue with responsibility; advisory board structure abolished and have regional boards.
2. Make up of board should be that the members are elected and in some areas they should be an at large election. Suggested a publically conducted election- present system doesn't work.

Frank Woods, of the Subsistence Resource Council, was here to testify. He indicated that the present advisory board system has not worked. He would like to see someone from a village in each district on the board to rightfully represent and understand the problems.

David Nanalook, from the village of Togiak in the Bristol Bay area was here also representing the Subsistence Resource Council. He backed up Wood's testimony that rural Alaska is being overlooked.

George Allen, from Rural CAP spoke indicated that it should be considered what authority to give the advisory committees, keeping the rural individuals in mind.

This bill will be considered further at a later date.

The meeting was adjourned at 9:00 p.m.

HB

63

GENERAL ANALYSIS OF

HOUSE BILL NO. 63

House Bill No. 63 would amend AS 13.26 relating to Guardians of Incapacitated Persons, to institute a new concept in guardianship law. Alaska's Title 13, is based upon the Uniform Probate Code, and both contain express provisions for only the appointment of a guardian for incapacitated persons who is given complete control of his ward's care and living arrangements, and total authority to act in the ward's place in matters of law where incapacity is a problem.

However, the latest thinking on the handling of persons who may because of certain handicaps require assistance in their maintenance and performance of actions having legal effect, is that there are many degrees of incapacity and not all of them require total guardianship. At the same time, they see a benefit in permitting such a handicapped individual to exercise as much responsibility as he is capable of in ordering his affairs.

The authors of the Uniform Probate Code, believe that it, and state statutes based upon it, contain implicit authority for the appointment and service of "partial" as well as "plenary" or full guardians. As far as can be ascertained no partial guardians have ever been used in this state, so those advocating their appointment, where appropriate, have urged that express language be inserted in the Alaska statute to encourage the adoption of this concept by creating a greater awareness of its possibilities.

(Sections 1 and 2)

The amendment proposed in these two sections does not address the partial guardian concept directly, but would merely include in the chapters definition of

"incapacitated person" one who is impaired by reason of a developmental disability as well as mental illness, deficiancy or retardation. Still retained would be impairment from"physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause(except minority)". Section 2 then defines "developmental disability". Since AS 13.26.005(1) uses the language "or other cause (except minority)" there is no real expansion of scope, but the condition of "developmental disability" is given equal emphasis with the other named causes.

Section 2 is also where the terms"partial" and "plenary" as applied to guardians, are defined. A "partial guardian" would have less than all of the legal rights and powers of a plenary guardian — just which ones would be specified by the court order appointing him.

(Section 3)

This would insert a purpose section restricting guardianship to only "the extent necessitated by the individual's actual mental and adaptive limitations."

(Section 4)

Because AS 13.26 treats of guardians appointed by will as well as those named by the courts, provision is made here for reconciling the partial guardianship with that set up in a will when the condition of the ward at the time of the testator's death could not be known. This section would provide that a guardian named by a will would have "plenary guardian" powers until the court court determine whether the powers of a "partial guardian" would be adequate, or whetehr no guadian is required at all.

(Section 5)

This section rewrites AS 13.26.105, but mainly to set out in great detail and chronological order the steps in the procedure for appointment of a guardian. About the only substantive change is to require a recommendation proposing the "type and scope" of guardianship services needed.

(Section 6)

This section expands AS 13.26.110 by inserting a more detailed description of the hearing procedure, but in a new provision requires the court to consider the feasibility of a partial guardian, before a plenary guardian is appointed.

(Section 7)

This is a new section requiring the court order establishing partial guardianship to contain the findsing of fact that indicate its desirability; define the powers and the duties of the guardian that will be most beneficial to the ward, and set out the specific legal disabilities to which the ward is subject. It also contains a provision formerly in AS 13.26.105, for examining the proposed living arrangements for the ward. A new requirement would be for all guardians to informa the court when they have placed their wards outside of the ward's home, whether or not the placement has resulted from a court order. This will let the court know of the location of all placements, so that they cannot be hidden away.

(Section 8)

AS 13.36.120 would be amended to provide that a guardianship would end at the expiration of the period set in the court order, in addition to the other termination triggers now in that section such as the death of the ward, or the death or incapacity of the guardian or his removal or resignation.

(Section 9)

This amendment would permit the court to reduce or increase the authority of the guardian, as well as to to remove or replace him, in response to a petition by the guardian as well as the present provision for the ward or other persons interested in the ward's welfare. This section would also eliminate a one year

period which had to elapse if the court did not grant special leave to petition for an adjudication that the ward was no longer incapacitated. The petition would not be able to be filed at any time, and could ask that more if not total responsibility could be given to the ward.

(Section 10)

This adds to the persons who must be notified of an appointment or modification proceeding. The present law calls for only notice to the guardian, ward, and ward's immediate family, while the amendment would expand the notice provision to the petitioner, anyone who made an evaluation for the petition's report, the director of a facility where the ward is living, and the ward's guardian ad litem if one has been appointed for him.

(Section 11)

A new subsection in AS 13.26.135 would require the court to try to make the ward understand that he could petition later for the reduction or elimination of guardianship, and for the ward to be given written information concerning the petition procedure.

(Section 12)

As temporary guardians are also treated in AS 13.26, this section provides that their powers and duties shall be specified in a court order, instead of being set out in AS 13.26.140 as they are now. This language was eliminated to comport with the partial guardian approach where the powers are contained in the court order.

(Section 13)

This change would add qualified guardianship agencies to the list of ptenetial guardians, but would not permit the court to appoint the agency having director care, to also be guardian because of a possible conflict of interest.

(Section 14)

This section would require a report annually on the condition of the ward and his estate, and provides that it evaluate the ward's condition comprehensively, describe his current living arrangments,indicate the need if any for continued guardianship services, and any other information the court requests or the guardian thinks is pertinent.

(Section 15)

Would amend AS 13.26.170 to permit the consolidation of guardianship and protective proceedings requiredfor the same person. Protective proceedings refers to the appointment of a conservator to manage the property of an incapacitated person.

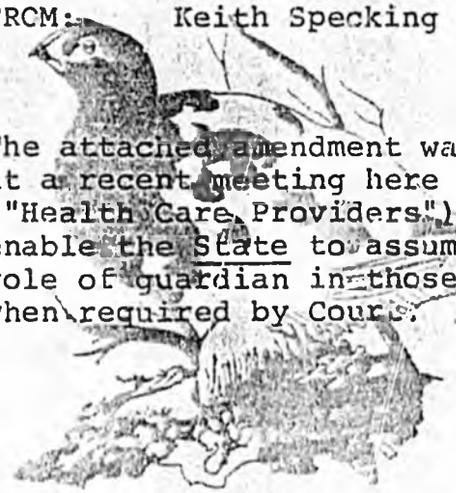
SUMMARY

This measure would not change any rules of court because there are no rules at this time on the subject of guardians, as the probate forms for this procedure cite the statutes in AS 13.26 rather than a court rule, and the probate rules are extremely brief because they rely largely on the civil rules. Thus a two-thirds majority vote of each house is not needed, and a simple plurality will suffice.

from the desk of . . .

Representative Keith Specking

MEMO TO: Terry Gardiner
FRCM: Keith Specking



The attached amendment was adopted at a recent meeting here in Juneau ("Health Care Providers") to enable the State to assume the role of guardian in those instances when required by Courts.

Compliments of Alaska Legislative Report
four fifteen "L" Street Anchorage, Alaska 99501 (907)279-4531

AMENDMENT

Offered to:
HOUSE BILL NO. 63

Page 8 , line 15

change period to comma and add

"except as provided in sec. 158 of this chapter."

Page 9, between lines 11 and 12:

insert the following:

Sec. 15. AS 13.26 is amended by adding 2 new sections to read:

AS 13 26.158. PUBLIC GUARDIAN. There is created the Office of Public Guardian which is located for administrative purposes only in the Department of Health and Social Services. It is completely independent of, and has no functional relationship with any other agency of that department which has the custody of minors or other incapacitated persons who may require guardians. When appointed guardian by the court, the public guardian has the same powers and duties as private guardians under this chapter.

AS 13.26.160. WHEN PUBLIC GUARDIAN MAY BE APPOINTED. The court may appoint the public guardian as a last priority under sec. 145 (b)(6) of this chapter when there is no person or private institution or agency willing or qualified to act as guardian, including those listed in sec. 145(b)(1) - (6) of this chapter.

AS 13.26.162. REIMBURSEMENT FOR PUBLUC GUARDIAN'S FEES. An incapacitated person for whom the public guardian is appointed is liable for the costs of service rendered by the public guardian according to ability to provide payment. Unpaid fees for the services rendered by the public guardian constitute a debt to the state and and are a preferred claim against the estate of the ward after death.

Page 9, line 12:

Change "Sec.15" to read "Sec. 16".

Committee files

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01 – JUNEAU 99811

Document# HJC #3

May 10, 1977

Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner;

Enclosed is an amendment to HB 63. Guardians for Incapacitated Persons. Although I am to understand that this bill will carry-over until the Second Session, I wanted your committee to be in receipt of the amendment.

Sincerely,

Sue Harris

for David W. Freer
Special Assistant to
the Commissioner

Enclosure as noted.

AMENDMENT

Offered to:

HOUSE BILL NO. 63

Page 9, between lines 11 and 12:

Insert:

* Sec. 15. AS 13.26 is amended by adding a new section to read:

AS 13.26.158. PUBLIC GUARDIAN. There is created in the Department of Health and Social Services an Office of Public Guardian. When appointed guardian by the court, the public guardian has the same powers and duties as private guardians under this chapter.

* Sec. 16. AS 13.26 is amended by adding a new section to read:

AS 13.26.160. WHEN PUBLIC GUARDIAN MAY BE APPOINTED. The court may appoint the public guardian as a last priority under sec. 145(b)(6) of this chapter when there is no person or private institution or agency willing or qualified to act as guardian, including those listed in sec. 145(b)(1) - (6) of this chapter.

* Sec. 17. AS 13.26 is amended by adding a new section to read:

AS 13.26.162. REIMBURSEMENT FOR PUBLIC GUARDIAN'S FEES. An incapacitated person for whom the public guardian is appointed is liable for the costs of services rendered by the public guardian on a sliding-fee scale according to ability to provide payment. The sliding-fee scale shall be established by regulations adopted by the Department of Health and Social Services. Unpaid fees for the services rendered by the public guardian constitute a debt to the state and are a preferred claim against the estate of the patient after death.

Page 9, line 12:

Change "Sec. 15" to read "sec. 18".

HB63

AMENDMENT

Offered to:

HOUSE BILL NO. 63

Page 9, between lines 11 and 12:

Insert:

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Change "Sec. 15" to read "sec. 18".

POSITION PAPER/Department of Health and Social Services

POSITION PAPER

HOUSE BILL NO. 63

"An Act relating to guardianship of incapacitated persons."

House Bill No. 63 would assist long-term care facilities within the State of Alaska in promoting and protecting the well-being of a person found to be incapacitated. This bill would also aid long-term care facilities in correctly monitoring and accounting for patient monies. There are currently no adequate safeguards or guidelines, other than federally imposed regulations, governing this area.

The Department of Health and Social Services recommends amending House Bill 63 to further insure that long-term care patients are guaranteed protection of their personal monies, property and rights when their mental or physical condition does not allow them to act for themselves in a sound and wise manner. Public guardians are currently needed for at least 285 patients, or 42% of a total of 673 nursing home patients. The appointment of a public guardian would establish controls for the honest and forthright spending and accounting of patient monies for personal and medical needs. The proposed amendment, as attached, would add three new subsections to AS 13.26. The proposed language would: (1) establish a court appointed public guardian when there is no person, agency or private institution willing or qualified to otherwise act as guardian; (2) create an Office of Public Guardian within the Department of Health and Social Services to perform this function; and finally, (3) establish a procedure for reimbursing the Public Guardian's fees.

The Department of Health and Social Services strongly supports House Bill 63 with the inclusion of the attached proposed amendments.

Recommended by: Richard R. Wilson — 2-24-78

Richard R. Wilson, Director
Division of Public Assistance

Date

Helen D. Beirne — 3-1-78

Helen D. Beirne, Commissioner
Department of Health & Social Services

Date

Offered to:

HOUSE BILL NO. 63

Page 9, between lines 11 and 12:

Insert:

* Sec. 15. AS 13.26 is amended by adding a new section to read:

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Page 9, line 12:

Change "Sec. 15" to read "sec. 18".

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 63
Title "An Act Relating to Guardianship of Incapacitated Persons"
Requested by _____ Date January 10, 1978

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Social Services
Budget Request Unit(s) Affected Office of Internal Review

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		53.3	56.5	59.9	63.5	67.3
200	TRAVEL		3.2	3.4	3.6	3.8	4.0
300	CONTRACTUAL		3.5	3.7	3.9	4.2	4.5
400	COMMODITIES		1.0	1.1	1.2	1.3	1.4
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		63.1	64.7	68.6	72.8	77.2

FUNDING (Thousands of Dollars)

GENERAL FUND		63.1	64.7	68.6	72.8	7.2
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		2	2	2	2	
PART TIME		0	0	0	0	
TEMPORARY		0	0	0	0	

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions:
A constant 6% cost of living increase was used for fiscal years subsequent to FY 1978.

B. Program Summary:
New Positions. It is assumed two (2) positions will be required to carry out this new function as follows:

Class Title	Salary	Benefits	Equipment	Travel	Other Costs	Total
Guardianship Admin.	29.7	7.3	.8	3.2	2.7	43.7
Clerk Typist III	12.4	3.9	1.3	-0-	1.8	19.4

IV. DATE January 10, 1978 PREPARED BY Roger C. Lange
Rick Wilson For
AGENCY Health and Social Services
PHONE 465-3331

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

Judiciary Gst Aff
pln

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER / POUCH H 01 – JUNEAU 99811

February 3, 1978

Legislature
Document# General #15

The Honorable Charles Parr
Alaska House of Representatives
Capitol Building, Room 110
Pouch V
Juneau, Alaska 99811

Dear Mr. Parr:

Please find enclosed a copy of correspondence between a social worker in Fairbanks and this Office. The problem indicated therein is addressed in HB 63, "An Act relating to guardianship of incapacitated persons."

This Department is very much in favor of HB 63 and desires to see it become law. The legislation would establish adequate safeguards for the handling and accounting of patient monies. A January 1977 survey indicated 42% of nursing home patients are in need of such guardianship. While protecting the mental, physical, and financial rights of the mentally incompetent, this legislation will also protect the nursing care facilities from liabilities they would otherwise incur in attempting to handle large sums of patient monies.

House Bill 63 is currently in the House Judiciary Committee. If you feel, as we do, that this is an important and needed piece of legislation, please encourage your colleagues on the House Judiciary Committee to consider HB 63.

Thank you for your attention in this matter.

Sincerely,

Helen D Beirne

Helen D. Beirne
Commissioner

Enclosure

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER / POUCH H 01 – JUNEAU 99811

January 17, 1978

Angie Hage
Social Worker
Careage North Convalescent Center
P.O Box 847
Fairbanks, Alaska 99707

Dear Ms. Hage:

In response to your letter of December 21, 1977 regarding Tom Martin, Mr. Martin was placed in our custody on December 9, 1977 and we were ordered to place him in Careage North or other suitable facility. Arrangements were made for his admission to your facility and he was subsequently admitted.

While Mr. Martin has been placed in our custody I am hesitant to delegate anyone to manage his "belongings or financial affairs" as these are functions normally delegated to a guardian or conservator, and neither of these functions have been specifically delegated to this department.

Also, we are seeking clarification as to the duties, responsibilities and authorities incumbent upon the "custodian" of an adult. While these areas are relatively clear in cases involving minors there is ambiguity in similar situations involving adults.

Our social worker will continue to assist in helping Mr. Martin, or a responsible, concerned individual or organization, to manage his personal property and financial affairs until a more satisfactory solution can be worked out.

I appreciate your concern and hope that we can work together in developing a constructive arrangement for Mr. Martin.

Sincerely,

Helen D. Beirne

Helen D. Beirne
Commissioner

HDB/AH/gj

CAREAGE NORTH CONVALESCENT CENTER

(A Division of Ridgeview Care Corporation)
POST OFFICE BOX [illegible] (ZIP CODE 99707)
FAIRBANKS, ALASKA
1919 GILLAM WAY (ZIP CODE 99701)
TELEPHONE (907) 452-1921

JAN 1978
RECEIVED
Office of the
Commissioner

December 21, 1977

Co[illegible] Helen Beirnes
[illegible]ce of Health and Social Services
[illegible]-01
Juneau, AK 99811

Dear Commissioner Beirnes:

I am the Social Worker at Careage North Health Care Center in Fairbanks where Mr. Tom Martin is currently a patient. Mr. Martin was committed to the custody of the Commissioner, Department of Health and Social Services, Division of Social Services for an indeterminate period of time and was placed at Careage North. I am assuming that as Commissioner you will be appointing someone to manage Mr. Martin's affairs. Currently, Everett Jackman, a State Social Worker here in Fairbanks is following Tom's case and arranged for his admission to our facility. Everett Jackman seems to be temporarily acting as a guardian until one is appointed.

I would appreciate your response regarding whom you would designate to be responsible for Mr. Martin's affairs. Mr. Martin had previously been a patient at Careage North about two years ago and caused many hassles regarding financial matters, personal belongings, etc. Careage North is unwilling to assume responsibility for his belongings, financial matters, etc. I am waiting for your immediate response to this matter.

Sincerely,

Angie Hage

Angie Hage
Social Worker

CAREAGE NORTH HEALTH CARE CENTER

AH/tlg

1 HB63

January 14, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the appointment of guardians for incapacitated persons. It combines several of the provisions of House Bills No. 645 and 734 of the Ninth Alaska Legislature.

The principal effect of this measure would be to provide specifically for two types of guardian for incapacitated persons. A plenary guardian with full responsibility could be appointed, as is done now, for totally incapacitated persons. This bill would also provide for a partial guardian with limited guardianship powers to be appointed for persons whose incapacity is less than total. That authority is implicit in the present statutes (see AS 13.26.110 and 13.26.150), but the bill would set it out explicitly because the courts seem reluctant to act in this way without further direction from the legislature.

It is hoped that the effect of such a change would be to encourage the appointment of guardians for those who are not totally incapacitated to provide assistance not now available, and to give the incapacitated person the opportunity to exercise legally all the functions of which he is capable. The bill would also permit the scope of the guardianship to be reduced or expanded in proportion to the changing capacity of the person. And it would assure that a guardian, whether plenary or partial, and whether court appointed or otherwise, gives notice to the court of his placement of the ward in any out-of-home living situation, if it has not been ordered by the court. This is intended to protect the

ward from simply being put away and forgotten.

These provisions on guardians apply to groups as well as to individuals. Under existing AS 13.26.105(a), a person interested in the welfare of an incapacitated person may petition the court for appointment of a guardian. Currently, AS 13.06.050(29) defines "person" to include an organization, and AS 13.06.050(27) defines "organization" to include "two or more persons having a joint or common interest." Nothing in our statutes prevents a group from petitioning the court or serving as a guardian. See AS 13.26.145. The amendments in sec. 13 of this bill further clarify this, and provide for public agencies to serve in this capacity; however, this bill makes clear that a public or private agency providing direct care to the incapacitated person would not be permitted to serve as his or her guardian.

Sincerely,

Jay S. Hammond
Governor

Keith Spocking
789-9417

ALASKA STATE HOSPITAL ASSOCIATION

MARCH 16, 1977

Whereas Tha Alaska State Hospital Association represents hospitals & long term care facilities in the state of Alaska; and

Whereas Approximately 50% of residents living in long term care facilities are incapacitated*; and

Whereas Approximately 98% of incapacitated residents have no legal guardians*; and

Whereas Incapacitated long term care facility residents have personal needs and business affairs on a routine basis in the areas of health, finance, living arrangements & correspondence that require timely and immediate decisions & action; and

Whereas The health facility administrator currently and frequently acting in necessity without the protection of legal appointment must perform functions commonly reserved for guardinns to protect the patient's best interest; and

Whereas It is not appropriate for a public or private agency providing direct care to act as or be appointed guardian;

Therefore Be it resolved that the Alaska State Hospital Association supports HB#63 in the tenth legislature of the state of Alaska first session "An Act Relating to Guardians of Incapacitated ersons;" However; because of the needs of incapacitated residents, be it further resolved that an amendment be requested of the legislature to encompass the following:

1. A guardian of last resort be established within the state government.
2. The guardian of last resort must be physically available within the areas of residence to have contact with patient's & most recognized needs and assess possible problem areas.
3. That the court system be required to hear petitions of incapacitation within two weeks of receipt and appointment of a guardian to be made within an additional two weeks.
4. ~~Recommend~~ The effective date of legislation be as soon as passed.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House Judiciary Committee

From: Margaret W. Berck, Staff

Date: March 26, 1980

Re: Fiscal Information from court system relative to HB 572

Mr. Rick Barrier of the Alaska Court System furnished the following fiscal information relative to HB 572 to me over the phone this date. Mr. Barrier stated that the information was his "best guess" at what this bill would cost the court system. A formal fiscal note from the court system is forthcoming.

POSITIONS:

Anchorage -- two guardian/visitors at range 16.
-- one accounting clerk at range 10.

Fairbanks -- one guardian/visitor at range 16.
-- one accounting clerk at range 10.

Juneau -- one guardian/visitor at range 16.
--one accounting clerk at range 10.

Ketchikan -- one assistant guardian/visitor at range 14.

ANNUAL COSTS FOR NEW COURT SYSTEM PERSONNEL----------$242,000.

$40,000 -- for contract guardians/visitors, experts, others.

$50,000 -- for respondents' attorney costs.

COMMODITIES AND EQUIPMENT FOR NEW EMPLOYEES:

$12,000.

TOTAL $364,000.

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Heer

To: _____ HOUSE BILL No. 63

SENATE BILL No. _____

PAGE: 1 LINE: 11 & 21

Line 11 - After word "deficiency" insert ", mental retardation" and change the word "development" to "developmental".

Line 21 - beginning of line should have "significant" inserted and the word "or" changed to "and".

"An Act relating to guardians of incapacitated persons."

1-17-77

COMMITTEE REPORT

JUDICIARY

HOUSE

1-31-77 Date

Mr. Speaker:

The Committee on HESS has had HB 63 under consideration. A majority of the members of the Committee

- [x] recommends it do pass
- [ ] recommends it do not pass
- [x] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Charles H Paxton Do Pass — Otto Do Pass

Don Donnell Do Pass — Rudell E. Stell, Do Pass

DO PASS — Mike Bi...

C.R. Hutchison Do Pass

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Al Ott Do Pass recommends: _____

_____ recommends: _____

_____ recommends: _____

Charles H Paxton
Chairman

H-60

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Neu

TO: _____ HOUSE BILL No. 63

SENATE BILL No. _____

PAGE: 1 LINE: 11 & 21

Line 11 - After word "deficiency" insert ", mental retardation" and change the word "development" to "developmental".

Line 21 - beginning of line should have "significant" inserted and the word "or" changed to "and".

becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state recognizes a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under §§ 100—155 of this chapter. (§ 1 ch 78 SLA 1972)

Sec. 13.26.100. Venue. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution under order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits. (§ 1 ch 78 SLA 1972)

Sec. 13.26.105. Procedure for court appointment of a guardian of an incapacitated person. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests. (§ 1 ch 78 SLA 1972)

SECTION C E D

SECTION E

SECTION F

Jurisdiction. — The jurisdiction of the court to appoint guardians for insane and incompetent persons is derived from the statute, and in order to obtain such jurisdiction it must affirmatively appear that the essential provisions of the statute are complied with. Martin v. White, 146 F. 461 (9th Cir. 1906).

The matter of the appointment of a guardian for the person and estate of an insane person is peculiarly within the equitable jurisdiction of the court; it is a proceeding for his benefit and for the protection of his estate. White's Guardian v. Martin, 2 Alaska 471 (1905).

Contestant of will has burden of showing lack of testamentary capacity. Paskvan v. Mesich, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Evidence as to testamentary capacity.—Incompetency to make a will is not necessarily established by the fact that one has been adjudged an incompetent in a guardianship proceeding. But this fact is evidence to be considered, along with other evidence, on the issue of testamentary capacity. Paskvan v. Mesich, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

A decision of the issue as to testamentary capacity depended largely, if not entirely, on oral testimony given by witnesses seen and heard by the trial judge. It was his province to judge their credibility and the supreme court may not reverse his decision unless it finds it to be clearly erroneous. Paskvan v. Mesich, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Prima facie case of testamentary capacity. — Where a witness stated under oath that the will was signed by decedent in her presence and the presence of one other subscribing witness, that decedent then declared that the instrument was his last will and testament and that at the time of execution of the will decedent was of sound and disposing mind and was not acting under duress, menace, fraud, undue influence or misrepresentation, there was evidence that established a prima facie case of testamentary capacity; the burden was then cast upon the contestants of the will to show that testamentary capacity was lacking. Paskvan v. Mesich, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Determination of insufficient mental capacity.—It was the determination of the supreme court that decedent did not have sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act. Paskvan v. Mesich, Sup. Ct. Op. No. 557 (File No. 913), 455 P.2d 229 (1969).

Commitment of an insane person pursuant to AS 12.45.110 is a separate proceeding from the appointment of a guardian of an insane person under this section. 1963 Op. Att'y Gen., No. 21.

Am. Jur. and ALR references.—25 Am. Jur., Guardian and Ward, § 17 et seq.

Mental condition justifying appointment of guardian, 17 ALR 1066.

Sec. 13.26.110. Findings; order of appointment. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated per-

HB

83

Members files

Thomas Taggart
Postal Box 1195
Seward, Alaska 99664
28 April, 1977

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Bear Mr. Gardiner:

I am writing this letter in reference to HB83 which may be before your Judiciary Committee now, and which is a very important piece of legislation for people in the Seward area.

You are probably somewhat aware of the recent attempts by the City of Seward to annex up to 56 square miles of state land in this area. The City did manage to annex an area of 10 square miles which had only 8 permanent residents, and has given notice that it intends to eventually annex the remaining areas contrary to the wishes of nearly everyone in those areas.

The people of the rural areas of Seward (approximately 1000) would benefit greatly by passage of this bill, because it would finally give them a voice concerning which direction their future takes. This voice has been denied them in the past due to totally unresponsive legislators (Specking & Kerttula) and to an insensitive City Administration. It should be duly noted that the citizens who reside within the present Seward City Limits also voted overwhelmingly not to annex the outlying areas.

I am hopeful that the House Judiciary Committee will look favorably upon House Bill 83, and pass it on with high recommendations. This is a sorely needed piece of legislation.

Sincerely,

Thomas Taggart

HB

87

A M E N D M E N T

Offered in the HOUSE By Carpenter and Brown

TO: HOUSE BILL NO. 87

Page 1, line 14, following "service", through line 16:

Delete the remainder of the sentence and insert:

if the power to use areawide taxes or other areawide revenues to finance special services of a service area has been acquired by holding an areawide election on the question. The vote on the question shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of votes cast in each classification is favorable, the power is adopted. After enactment of an authorizing ordinance the borough may make appropriations for the purpose authorized.

Page 1, line 22:

Following the word "perform", delete ". Grants so made shall be authorized by borough ordinance." and insert:

if the power to use areawide taxes or other areawide revenues for grants to cities has been acquired by holding an areawide election on the question. The vote on the question shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of

the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of votes cast in each classification is favorable, the power is adopted. After enactment of an authorizing ordinance the borough may make appropriations for the purpose authorized.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 3, 1978

SUBJECT: HB 87 - Grants from boroughs to service areas and cities.

TO: House Judiciary Committee

FROM: Billy G. Berrier, Director
Division of Legal Services

You have requested our opinion on whether the authorization for boroughs to finance from areawide revenues all or part of the special services provided by service areas and to make grants to cities contained in HB 87 is constitutional. In my opinion the authority granted is constitutional.

There are a host of arguments that may be raised against a revenue sharing program. These center around taxing one area for the benefit of other areas. Revenue sharing has long existed on federal and state levels and I see no difference of constitutional significance.

It could be argued that the constitutional provision in Sec. 5 of Article X of the state constitution which provides:

> "The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services."

by negative inference prohibits financing special services by other means.

The power to impose differential taxes based upon differential services had been normally held unconstitutional leading to creation of single purpose units of local government and other avoidance devices. The constitutional convention therefore deliberately gave this power in order to obviate the problem and implement the strong constitutional policy of a minimum of local government units. There appears no indication that this was intended as the exclusive method of financing special services.

Sec. 13 of Art. X set out a strong policy of local government cooperation. This would support my view that the quoted language is expansive of the power of boroughs rather than restrictive.

BGB:hjd

Introduced: 1/21/77
Referred: Community & Regional Affairs and Judiciary

IN THE HOUSE BY MALONE

HOUSE BILL NO. 87

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to appropriations and grants from boroughs to service areas and cities; and providing for an effective date."

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

* Section 1. AS 29.63.090(b) is amended to read:

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services or may by ordinance authorize appropriations from areawide taxes or other areawide revenues to finance all or part of the special service and, after enactment of an authorizing ordinance, may make appropriations for the purpose authorized.

* Sec. 2. AS 29.73 is amended by adding a new section to read:

Sec. 29.73.070. REVENUE SHARING GRANTS BY BOROUGHS. A home rule or general law borough of any class may make grants from areawide taxes or other areawide revenues to cities within the borough or service areas of the borough for a function the city or service area is authorized to perform. Grants so made shall be authorized by borough ordinance.

* Sec. 3. AS 29.13.100 is amended by adding a new subsection to read:

38 (37) AS 29.73.070 (revenue sharing by boroughs)

* Sec. 4. AS 29.48.210 is amended to read:

Sec. 29.48.210. EXPENDITURE OF BOROUGH REVENUES. Borough revenues levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs, [AND] on areawide functions, and as authorized in AS 29.63.090(b) and 29.73.070 only.

Revenues levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only.

* Sec. 5. AS 29.53.010 is amended to read:

Sec. 29.53.010. GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, <u>for appropriations authorized under AS 29.63.090(b), for grants authorized under AS 29.73.070;</u> and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

HB
97

Introduced: 1/21/77
Referred: Commerce and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to termination of financing statements under the Uniform Commercial Code; and providing for an effective date."

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

* Section 1. AS 45.05.774(a) is amended to read:

(a) If there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must terminate a filed financing statement by filing [, ON WRITTEN DEMAND BY THE DEBTOR, SEND THE DEBTOR] a termination statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement is as prescribed by the administrative director of courts. If the affected secured party fails to file [SEND] the termination statement within 10 days after the date of satisfaction of the obligation or commitment to make advances, incur obligations, or otherwise give value which is secured by the filed financing statement [AFTER PROPER DEMAND FOR IT], he is liable ~~to the debtor for $100, and in addition,~~ for any loss caused to the debtor by this failure.

* Sec. 2. This Act takes effect on July 1, 1977.

#

HB 97

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR
DIVISION OF BANKING AND SECURITIES
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE
HOUSE JUDICIARY COMMITTEE

April 3, 1978

Good afternoon, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am Director of Banking and Securities within the Department of Commerce and Economic Development. I want to thank you for allowing me to appear before you on behalf of the administration to offer comments on HB 97.

The bill before you amends the Alaska Uniform Commercial Code found at AS 45.05. The code sets out numerous procedures affecting contracts and follows the Uniform Commercial Code which has been adopted by 49 states in one form or another.

Under the UCC, a creditor may perfect his interest in goods purchased by a debtor by filing a financing statement and tendering a filing fee. The filing is good for as much as five years. Very often the debtor will pay the debt in full before the five year period is up. However, the financing statement filing remains a matter of record until it is terminated under AS 45.05.774(a).

Section 1 of the bill proposes a mandatory termination of filings when the obligation is paid off. The burden of filing the termination would be on the secured party not on the debtor as required by the present law.

The result of this proposed amendment would be more current information on file in the UCC filing office. As the records are filed now, a record search may show an outstanding secured obligation when in fact the obligation has been satisfied but no termination statement has been filed. This eventuality would result in an incorrect reporting of the ownership of the goods involved and perhaps affect the debtor's credit standing.

The secured party is in a better position to assume the burden of terminating the filing because the date of the transaction and the awareness of the statutory requirements fall within their purview.

The effect of this proposed amendment on the UCC filing office would be dramatic. That is, the records of the office indicate between 1,200 and 1,600 new filings are processed per month and on the average about 400 termination notices are processed per month of which about 300 are terminated because they go the full maturity period of five years. The filings with the UCC office pertaining to goods on which secured parties no longer have secured interests could be culled from the active filings and thus reduce the volume of filings held by the office. With fewer files, record searches requested by the public may be accomplished more quickly and efficiently in the best interest of the requester and the Alaskan taxpayer.

The present law provides that the Department of Administration operate the UCC filing office. However, the UCC filing office more logically falls within the purview of the Division of Banking and Securities within the Department of Commerce and Economic Development. That is, the filing and office procedures and the nature of the filings are not dissimilar from the filing operations of the division's corporation section required under the Alaska Corporation Title, AS 10.

I therefore recommend that the statutory duty of maintaining the UCC filing office be transferred to the Department of Commerce and Economic Development. The attached amendments and changes are then respectfully submitted to this committee for inclusion in the bill.

Proposed amendments to HB 97

Change title of bill to read: "An Act relating to termination of financing statements and transferring administration of Uniform Commercial Code; and providing for an effective date."

Line 29, delete Sec. 2 and add the following sections:

*Sec. 2. AS 45.05.768(a)(3) is amended to read:

(3) in all other cases, in the office of the Department of Commerce and Economic Development [ADMINISTRATION].

*Sec. 3. AS 45.05.734(e) is amended to read:

(e) the requirements of secs. 768(a)(1) and (2), 772(b), (c) and (e) and 780 of this chapter do not apply to a security interest in personal property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas, or water, but this security interest may be perfected under secs. 690-794 of this chapter by filing the deed of trust or mortgage in the office of the commissioner of the Department of Commerce and Economic Development [ADMINISTRATION]. When filed, the instrument remains effective until terminated, without the need for filing a continuation statement. Assignments and releases of the instrument may also be filed in the office of the commissioner of the Department of Commerce and Economic Development [ADMINISTRATION]. The commissioner is a filing officer for the foregoing purposes, and the uniform fee for filing, indexing and furnishing filing data under this subsection is $10.00.

*Sec. 4. Sections 2 and 3 of this Act are effective immediately in accordance with AS 01.10.070(c).

*Sec. 5. Section 1 of this Act takes effect July 1, 1978.

HB99

January 21, 1977

Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the termination of financing statements under the Uniform Commercial Code, AS 45.05. This bill would shift, from the debtor to the secured party, the burden of clearing the records when an outstanding secured obligation no longer exists.

Currently there is no requirement that a secured party terminate a financing statement when the obligation it secures has been satisfied. As a result, many financing statements remain on file until they automatically lapse five years from the date of filing. In the meantime, a records search may result in the reporting of incorrect information concerning the ownership of property, information which would reflect unfavorably on the debtor's credit.

Under the existing statute, the debtor must request that the secured party send a termination statement to him, and then file the statement with the recorder. This bill would shift the filing requirement to the secured party, the party possessing a greater awareness of statutory provisions governing such secured interests.

Sincerely,

Jay S. Hammond
Governor

HB

100

file on these if they come here

February 16, 1977

The Honorable Bob Bradley
Chairman
House State Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: HB 100 and HB 181; filling of court-created vacancies in the legislature

Dear Representative Bradley:

The following are my comments on the referenced bills.

HB 100: Proposed AS 15.40.480 in the second sentence has the effect of creating a mandatory vacancy. This vacancy, pursuant to proposed AS 15.40.490, may exist for as long as 55 days, or possibly for more than one-half of the legislative session. This mandated vacancy raises serious constitutional problems in view of the directive of Alaska Constitution, Article II, Section 4, which provides:

> A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

Although there are no cases in Alaska on point, it would appear clear that the intent of the constitutional provision set forth above is to avoid vacancies where possible. Proposed AS 15.40.480 would do just the contrary.

HB 181: The comments set forth above apply as well to proposed AS 15.40.351(b) and proposed AS 15.40.431. Their effect is also contrary to the apparent intent behind the constitutional provision set forth above.

A suggested solution to the problem is simply to amend the definition of "vacancy" found in the present AS 15.60.010(19), thus effectuating the present statutory provisions for filling vacancies set forth in the present AS 15.40. Additionally, in view of the fact that the practical

effect of an election being overturned shortly before or at the very beginning of a legislative session is to create an empty seat for approximately one-half of the session, the legislature should promulgate statutes for filling that vacancy by appointment by the governor on an interim basis. The authority of the legislature to pass on that appointment could be set forth very clearly; see, for example, AS 15.40.330. This solution would carry out the intent behind Alaska Constitution, Article II, Section 4, set forth above, and have the additional important practical benefit of providing representation for a district that might be otherwise unrepresented for one-half of the legislative session.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
William T. Council
Assistant Attorney General

WTC:cp

cc: The Honorable Bill Miles
The Honorable Tim Kelly
The Honorable Hugh Malone
Art Peterson

House Judiciary
April 6, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, Rudd and Dankworth. Mr. Specking came late. Mr. Brown was absent.

HB 100 Procedure when an election to the state legislature is set aside by court HB 100

HB 181 Vacancies in the Legislature HB 181

Bill Miles, sponsor for HB 181, explained HB 100 and HB 181 so that the committee would be aware of the differences.

Tim Kelly here to testify on HB 100, for which he is a sponsor. He indicated that he does not see a problem with appointments under certain conditions.

Bill MIles explained that his bill would give "power to the people" by calling for a special election to fill vacancies in the Legislature. The committee agreed to work with Mile's bill. A committee substitute will be drafted so that after April 1, the Governor would make an appointment to fill any vacancies.

HB 341 Liability of health care providers HB 341

This started off as a discussion of HB 414, which also has to do with liability of health care providers. It was brought to the attention of the committee that Gardiner's HB 414 and Mile's HB 341 are basically the same. Rudd moved that HB 341 be moved out of committee. There was no objection, so this was done.

HB 208 Child custody jurisdiction HB 208

Liz Arnold from the Attorney General's Office was here to testify on the amendments that were proposed to HB 208 by the A.G.'s office. Mr. Dankworth moved to adopt the amendments suggested by the A.G.'s office. There was no objection, so the amendments were adopted. Miles moved that HB 208 be moved out of commitee. The motion was carried so CSHB 208 was moved out.

HB 143 Compulsion of testimony or other evidence in judicial proceedings HB 143

HB 393 Immunity and protection of witnesses HB 393

The amendments that had been adopted for HB 393 were looked at. Miles moved that the sale of heroin amendment by the A.G.'s office be taken out. The motion carried. There was a motion to pass out CSHB 143. (CSHB 143 wil incorporate HB143 and HB 393.) The motion carried.

The meeting was adjourned at 4:25.

HB
101

101

MOTION

Delete

Sec. 170

Adopted

failed to get out of committee

For
Gardner
Brown

Against
Dankworth
Eliasen
Rudd

Original sponsor: Swanson

Offered: 3/29/77
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 101

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to telephone utilities."

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

* Section 1. AS 42.20 is amended by adding new sections to read:

ARTICLE 4. MISCELLANEOUS.

Sec. 42.20.160. PAYMENT OF BILLS; DEDUCTIONS FOR NONSERVICE. (a) A subscriber may deduct from a bill for telephone service an amount equal to one day of service for each day the subscriber's telephone is inoperative due to malfunctioning of the individual subscriber's telephone service or the telephone system to which it is connected due to no fault of the subscriber. If the subscriber has been billed in advance for local telephone service, the subscriber may deduct the amount from the following billing. If the bill is rendered to a subscriber on a monthly basis, the amount that may be deducted for each day the telephone service is inoperative is 1/30th of the monthly charge for local telephone service, inclusive of taxes imposed either by the federal, state or local governments.

(b) For the purpose of this section, "each day the subscriber's telephone service is inoperative" means a malfunctioning of the individual subscriber's telephone service or the telephone system to which it is connected for a period of at least 12 hours in a 24-hour day beginning at the time the malfunction is reported to the local exchange telephone utility.

Sec. 42.20.170. LIMITATION ON RATES. (a) No local exchange telephone utility may charge or receive both a base service rate and message

April 20, 1977

Memo

To: House Judiciary Committee

From: John Sund, Administrative Assistant

Re: HB 101, HB 102

Telephone call from Chugiach Electric Company, Larry Markley. He wished to express the fact that Chugiach Electric was in opposition to these House Bills and that they had voiced that opposition while it was in the Commerce Committee.

Chugiach Electric is a cooperative and their annual meeting is Wednesday, April 20 and he did not believe he would be able to come to Juneau to testify against it.

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

REPRESENTATIVE JOE McKINNON
POUCH V, JUNEAU, ALASKA 99811

CHAIRMAN: COMMERCE COMMITTEE
MEMBER: STATE AFFAIRS COMMITTEE

HOUSE COMMERCE COMMITTEE

CHAIRMAN'S REPORT

HB 101

In the Commerce Committee Substitute for House Bill 101, the Committee removed the proposed section, "Limitation on Liability for Telephone Service Charges", from the original bill. The Committee feels that this provision, which requires that long distance toll charges must be billed within 60 days, is impractical for Alaska because of the number of phone companies that many of those charges must pass through routinely.

However, the Committee feels strongly that the Alaska Public Utilities Commission is obligated to impel the Federal Communications Commission to accelerate billing for Alaskan telephone subscribers. The burden of delayed toll billings for Alaskans has reached alarming proportions and must be relieved.

Joe McKinnon

Joe McKinnon
Chairman
House Commerce Committee

BILL ANALYSIS

ASSIGNMENT DATE

UNASSIGNED 1/24/77

EPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
ommerce & Economic Development	Swanson	HB 101

EPARTMENT POSITION

VISION DIRECTOR	DATE	COMMISSIONER	DATE
ommissioner, APUC	1-28-77		

OVERNOR'S OFFICE USE

POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

DATE:

MMARY

RELATED BILLS (SIMILAR OR CONFLICTING)

ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL

PROGRAM EFFECTS OF BILL

NONE

FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

AMENDMENTS PROPOSED:

NONE

COMMENTS:

SEE ATTACHED

HB 101

Comments of the Alaska Public Utilities Commission

Deductions for interruptions for local telephone service are provided for in the tariff of several Alaska telephone utilities. A cursory inspection reveals such provisions in the tariffs of the following utilities:

Glacier State Telephone Company - Kenai/Soldotna
Glacier State Telephone Company - North Pole
Juneau & Douglas Telephone Company - Juneau
General Telephone Company of Alaska - Haines/Petersburg/Wrangell
Matanuska Telephone Assoc., Inc. - Palmer
Anchorage Telephone Utility - Anchorage

The tariff provisions are not uniform but can be changed by the utility or as a result of complaints by consumers or the Commission staff. The Consumer Complaints Section of the Commission handles numerous complaints about service outages and has been able to get most billing adjustments resolved on an informal basis. There is a possiblity that if a law such as this is on the books that consumers might become overzealous in their own arbitrary deductions from utility bills.

Section 42.20.170 would absolve a telephone subscriber of any liability for "telephone service charges that are not billed within 60 days of the date they were incurred." There would be a legal question about the status of a debt such as this when it is incurred by the subscriber. The intent of the bills seems to be a protest against the seemingly unreasonable delays in getting long distance telephone toll charges on to the subscriber's bill. While we may sympathize with this sentiment relative to delays in long distance billing, it should be noted that these delays in most instances are beyond the control of the long lines carrier and connecting utility. Most delays are a direct result of protracted billing from the American Telephone and Telegraph Company in the Lower 48. It seems rather harsh to hold RCA Alaska Communications and the local exchange company responsible for the delays.

Section 42.20.180 would limit telephone charges to either a base service rate or a message unit pricing within an exchange area but not both. Such a limitation would be applicable to an area such as Los Angeles or San Francisco. There is presently no "message unit pricing" within the State of Alaska. The APUC is not aware of any plans for implementing such a pricing system. Such a provision thus would be premature and should await the actual implementation of message unit pricing.

APUC comment?

Westberg - today, people buying & installing own telephone - legal?
- how long PUC if no tel. goes georgitz?
- what A is saving?
How many consumer complaints?

Original sponsor: Swanson

Offered: 3/29/77
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 101

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to telephone utiiities."

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

* Section 1. AS 42.20 is amended by adding new sections to read:

ARTICLE 4. MISCELLANEOUS.

Sec. 42.20.160. PAYMENT OF BILLS; DEDUCTIONS FOR NONSERVICE. (a) A subscriber may deduct from a bill for telephone service an amount equal to one day of service for each day the subscriber's telephone is inoperative due to malfunctioning of the individual subscriber's telephone service or the telephone system to which it is connected due to no fault of the subscriber. If the subscriber has been billed in advance for local telephone service, the subscriber may deduct the amount from the following billing. If the bill is rendered to a subscriber on a monthly basis, the amount that may be deducted for each day the telephone service is inoperative is 1/30th of the monthly charge for local telephone service, inclusive of taxes imposed either by the federal, state or local governments.

subscriber exception for kids jerking line

(b) For the purpose of this section, "each day the subscriber's telephone service is inoperative" means a malfunctioning of the individual subscriber's telephone service or the telephone system to which it is connected for a period of at least 12 hours in a 24-hour day beginning at the time the malfunction is reported to the local exchange telephone utility.

should be 24 ! exclude holidays weekends !

Sec. 42.20.170. LIMITATION ON RATES. (a) No local exchange telephone utility may charge or receive both a base service rate and message

Westberly - no one has asked for message unit pricing
- M.U.P. = metropolitan area

unit pricing within its exchange area.

(b) In this section:

(1) "base service rate" means the set charge to subscribers within an exchange area;

(2) "exchange area" means a specific area in which a developed local exchange telephone service is furnished by a utility;

(3) "local exchange telephone utility" means a utility engaged in the business of furnishing communications service to the public for compensation through one or more local telephone exchanges which may be operated separately or in conjunction with one or more other local telephone exchanges through directly interconnected circuitry in which extended area service is provided without requiring the payment of a toll charge;

(4) "message unit pricing" means charging subscribers within an exchange area according to the number or duration of calls made within the exchange area.

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

REPRESENTATIVE JOE McKINNON
POUCH V, JUNEAU, ALASKA 99811

CHAIRMAN: COMMERCE COMMITTEE
MEMBER: STATE AFFAIRS COMMITTEE

HOUSE COMMERCE COMMITTEE

CHAIRMAN'S REPORT

HB 101

In the Commerce Committee Substitute for House Bill 101, the Committee removed the proposed section, "Limitation on Liability for Telephone Service Charges", from the original bill. The Committee feels that this provision, which requires that long distance toll charges must be billed within 60 days, is impractical for Alaska because of the number of phone companies that many of those charges must pass through routinely.

However, the Committee feels strongly that the Alaska Public Utilities Commission is obligated to impel the Federal Communications Commission to accelerate billing for Alaskan telephone subscribers. The burden of delayed toll billings for Alaskans has reached alarming proportions and must be relieved.

Joe McKinnon

Joe McKinnon
Chairman
House Commerce Committee

April 20, 1977

Memo

To: House Judiciary Committee

From: John Sund, Administrative Assistant

Re: HB 101, HB 102

Telephone call from Chugiach Electric Company, Larry Markley. He wished to express the fact that Chugiach Electric was in opposition to these House Bills and that they had voiced that opposition while it was in the Commerce Committee.

Chugiach Electric is a cooperative and their annual meeting is Wednesday, April 20 and he did not believe he would be able to come to Juneau to testify against it.

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED 1/24/77

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce & Economic Development	Swanson	HB 101

DEPARTMENT POSITION

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Commissioner, APUC	1-28-77		

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

NONE

FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

AMENDMENTS PROPOSED:

NONE

COMMENTS:

SEE ATTACHED

HB 101

Comments of the Alaska Public Utilities Commission

Deductions for interruptions for local telephone service are provided for in the tariff of several Alaska telephone utilities. A cursory inspection reveals such provisions in the tariffs of the following utilities:

Glacier State Telephone Company - Kenai/Soldotna
Glacier State Telephone Company - North Pole
Juneau & Douglas Telephone Company - Juneau
General Telephone Company of Alaska - Haines/Petersburg/Wrangell
Matanuska Telephone Assoc., Inc. - Palmer
Anchorage Telephone Utility - Anchorage

The tariff provisions are not uniform but can be changed by the utility or as a result of complaints by consumers or the Commission staff. The Consumer Complaints Section of the Commission handles numerous complaints about service outages and has been able to get most billing adjustments resolved on an informal basis. There is a possiblity that if a law such as this is on the books that consumers might beccme overzealous in their own arbitrary deductions from utility bills.

Section 42.20.170 would absolve a telephone subscriber of any liability for "telephone service charges that are not billed within 60 days of the date they were incurred." There would be a legal question about the status of a debt such as this when it is incurred by the subscriber. The intent of the bills seems to be a protest against the seemingly unreasonable delays in getting long distance telephone toll charges on to the subscriber's bill. While we may sympathize with this sentiment relative to delays in long distance billing, it should be noted that these delays in most instances are beyond the control of the long lines carrier and connecting utility. Most delays are a direct result of protracted billing from the American Telephone and Telegraph Company in the Lower 48. It seems rather harsh to hold RCA Alaska Communications and the local exchange company responsible for the delays.

Section 42.20.180 would limit telephone charges to either a base service rate or a message unit pricing within an exchange area but not both. Such a limitation would be applicable to an area such as Los Angeles or San Francisco. There is presently no "message unit pricing" within the State of Alaska. The APUC is not aware of any plans for implementing such a pricing system. Such a provision thus would be premature and should await the actual implementation of message unit pricing.

Q = Can break up malfunctioning tel. lines
encountered I. D. calls

101

Weatherly — opposed
— "afraid of over-zealous consumer"

WNB

— 600
— would not enforce bill for
those utils APUC does not regulate
—

102 — - request go to Jim Linn
Q — - In last few months, 3 requests
for decreases as results of lowered
fuel costs.
who?
O.K.?

Q New Tariff note.

Ken Lawson (Cont. Tels) in 41 states
- already, if [redacted] tel. is
out for 24 hrs, they get break if
consumer notifies.

- CS added reporting function.

- doesn't like 12-hr.

—

Juneau & Douglas Telephone Company
Glacier State Telephone Company
Member Companies of Continental Telephone System
909 West 9th/Suite 340
Anchorage, Alaska 99501
(907) 274-3635

E. Ken Larsen
Alaska State Manager

per

Tape of 4/20 hearing on HB 101 / HB 102 sent to Ken Larsen on 4/27 77.

House Judiciary
April 22, 1977

The meeting was called to order at 3:50 by Chairman, Gardiner. Members present were Gardiner, Dankworth, Eliason, Rudd and Brown. Miles and Specking were absent.

SB 186am Suspension and removal of judges SB 186am

The committee considered this bill only briefly, as the House version of this bill had already been considered by the committee. It was decided to pass this bill out with the language of the House version of the bill. It will be a House CS for SB 186am.

SB 188 Membership on the Alaska Code Commission SB 188

Fred Brown explained the intent of the bill. Gardiner proposed several amendments which were adopted.

There was a motion to move CS SB 188 out of committee. There was no objection, so this was done.

HB 468 Judicial vacancies HB 468

Elaine Andrews from the Judicial Council was here to speak in support of the bill.

Mrs. Rudd moved that the bill be moved out of committee. There was no objection, so this was done.

SB 89 Exemption of municipalites from the requirement of posting bonds for court costs and the amount of judgment SB 89

Peggy Burke from Alaska Legal Services explained what the bill would do. She suggested a proposed amendment. The committee felt that they would like to get the opinion of Sen. Croft and Art Snowden before doing anything on this bill.

HB 101 Telephone utilities HB 101

The committee had HB 101 under discussion.

There was a motion to delete Section 170 of the bill. The motion carried.

Mr. Brown moved the bill as amended. There was a discussion. The motion failed, so the bill remained in committee.

HB 102 Public utility rates HB 102

This bill was considered briefly. The Commerce Committee recommendations were discussed.

There was a motion to move the bill out as a CS with the Commerce Committee suggestions. The motion carried.

The meeting was adjourned at 4:50.

House Judiciary
April 20, 1977

The meeting was called to order at 3:25 p.m. by Vice-Chairman Miles. Members present were Miles, Dankworth, Brown and Rudd. Gardiner and Eliason came late. Specking was absent,

HB 101 Telephone utilities HB 101

Rep. Red Swanson, sponsor for this bill was here to explain the intent of the bill. He explained that the bill would regulate telephone rates in Alaska to give people in Alaska some means to get service and not to be charged for service when they don't get it. IN HB 101, when your telephone doesn't work, you don't have to pay for it. Mr. Swanson reported that the telephone company has said that the phones would work and that people wouldn't be charged if they didn't work, but this hasn't happened.

HB 102 Public utility rates HB 102

Rep. Swanson, sponsor for this bill, indicated that this bill would give protection to the consumer, which he doesn't feel is occurring presently under th P.U.C., although they claim to be protecting the consumer.

HB 101 Telephone utilities
Commissioner Marvin Weatherly from the P.U.C. was here to speak in opposition to HB 101. He indicated his feelings that he does feel that the P.U.C. responds to consumer needs. HB 101

HB 102 Public utility rates HB 102

Commissioner Carolyn Guess from the P.U.C. was here to speak in opposition to this bill. There objection to this bill is that they feel that the P.U.C. already has a procedure which is fair and equitable. This bill would cost the P.U.C. because they couldn't carry it out with their existing staff, and subsequently, the consumer would be paying more.

HB 101 Telephone utilities HB 101

Mr. Larson from Continental Telephone Company was here to testify in oppostion to the bill. He feels that it is commendable that a phone is fixed free of charge- this is not true for other utilities such as electricity and plumbing. He feels that customers have been given credit adjustments when their phones have been out of service. He feels that this legislation would be an attempt to supplement a function that has already been assigned to the P.U.C.

Ted Burns, Assistant Municipal Attorney for Anchorage felt that most of his testimony had been covered already by the P.U.C. and by Mr. Larson, so he basically reiterated their testimony.

SB 54 Adoption assistance for hard to place children in foster homes SB 54

Gary Sheridan from the Department of Health and Social Services was here to testify in support of this bill. He explained that the essence of the bill is to take foster care children and allow a more permanent placement in a more permanent home for them.

Rep. Brown moved that SB 54 be moved out of committee. Since there was no objection, this was done.

SB 83 Transfer of commercial fisheries entry and interim use permits SB 83

Mr. Ricky from the Commercial Fisheries Entry Commission was here to briefly explain the intent of the bill. The bill was put in by request of the Governor to "clean-up" some of the language in the statutes.

Gardiner moved several amendments which were adopted.

Gary Sheridan was here to testify as a concerned citizen interested in buying a commercial fishing permit. He explained that the procedure was very difficult and costly.

Gardiner moved that SB 83 as amended be moved out of committee. The motion carried, so this was done.

The meeting was adjourned at 5:15 p.m.

HB

111

Terry, for your consideration in relation to HB-111 This is the case Rep. Osterback bases his case on!

District Court
State of Alaska
THIRD JUDICIAL DISTRICT
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

CHAMBERS OF
LAUREL J. PETERSON, JUDGE

March 24, 1977

Richard L. Burton
Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99811

Dear Mr. Burton:

I had occasion to read with interest an article published in the March 18th Anchorage Times which relates Representative Osterback's attempt to have the Fish and Wildlife Protection Division transferred from Public Safety back to Fish and Game. Although the merits of such a move are beyond my scope of competence, I was dismayed to find that a recent trial in Sand Point has been used as an example to criticize the Department of Fish and Wildlife Protection.

This trial involved fishing in closed waters, specifically the mouth of a spawning stream. The facts and the law were presented by very competent counsel both for the State and defense to a jury comprised of community members. After deliberations the jury acquitted all defendants.

Even though the defendants were acquitted, this trial should not be used as criticism of the officers involved. Let me point out that the jury saw fit to ignore the officers' testimony that they observed loaded nets being pulled through the waters and ultimately hoisted on board the boats. Due to this activity being in the late evening only the full nets were observed; not individual fish. The jury acquitted because actual fish were not identified by the protection officers. The most obvious, common sense conclusion that the nets contained fish was rejected and speculation has it that someother unknown quantity of wildlife was contained therein.

It is indeed unfortunate that the jury thought that "taking" meant actually seeing the fins of fish, especially when a further instruction could have been given which would have clearly defined this word to encompass the acts observed. I choose to believe that the jury acquitted due to an honest misunderstanding of the law. And, as trial judge, the responsibility for allowing such a situation to present itself lies squarely with me - not with the attorneys nor the state officers involved. However, let me point out that after hearing the evidence the defense attorney did not raise this issue.

Mr. Commissioner, I am confident you are aware of the sociological and community problems with prosecution of fishing violations in a small fishing community during fishing season. Even though the result was not what the prosecutor would have wished, all those participating agreed that the trial was beneficial in that the intent to prosecute violators was reaffirmed. The subtle benefit from the trial may very well be hidden within the future conduct of all fisherman.

In closing let me reaffirm my statement that this case could best serve as an example of the professionally competent investigative work product of the Fish and Wildlife Protection Division.

Very truly yours,

Laurel J. Peterson
District Court Judge

LJP:ft

copies of letters
to Editor -
letters in
HB 111
Terry's
Committee file

file HB 111

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

JAY S. HAMMOND, GOVERNOR

RICHARD L. BURTON

DIVISION OF FISH AND WILDLIFE PROTECTION / POUCH N – JUNEAU 99811

R.R. 3, Box 3048-1
Juneau, Alaska 99801

March 7, 1977

The Honorable Terry Gardner
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Mr. Gardner:

Please accept this letter in answer to your question of why we were not patrolling the herring fishery in District 3.

It is with very little pleasure that I have to tell you that our primary reason was that we did not have a vessel and/or operator available.

The 19 foot Glasply that is assigned to the Craig area was and still is in Ketchikan waiting on parts to repair the outboard. And our operator that is assigned to the Ketchikan area that has the ability to run the Stenella (38 foot Bertram) was and still is, in the academy at Sitka.

To be very frank with you Mr. Gardner, we did not have any scheduled plans that included patrolling that area. For the past five years that I've been responsible for the S.E. area this year is the first time that we've been made aware of a problem in this winter fishery. Also, the emergency closures caught us a little off guard and/or unprepared, for normally all areas were open all season, but not this year.

As I understand it, you received complaints of vessels fishing in closed waters and herring being wasted.

Immediately after your telephone call I requested Sgt. Blodgett who was just assigned to Ketchikan on December 1, to investigate those complaints and this is the report that I received from him.

On 2/10/77, Officer Fuelling attended a meeting of fishermen from Craig. The meeting was called by Fred Shapley to try to close down the herring fishery in District 3. Officer Fuelling reported on what areas were already closed to herring fishing. At this time, George Shapley reported seeing a vessel in the closed area on 1/4/77 acting suspicious. He could not identify the vessel nor could he positively say the vessel was fishing, but he thought it was from Petersburg. This was the first time we had heard there was possible herring fishing in closed waters.

From 2/15/77 through 2/19/77, Officer Fuelling patrolled the closed area aboard a Department of Fish and Game vessel. No vessels were observed in the closed area. One vessel was observed in the open area of District 3.

With the permanent assignment of a 38 foot vessel at Ketchikan, it will now give us the capabilities of patrolling a winter fishery, and once the officer who will operate that vessel completes his training at the academy we will have the capability of immediately responding to complaints and working winter fisheries. Something we have not been capable of before.

I would be available to discuss this fishery or any enforcement program within S.E. with you at your convenience.

Sincerely,

Lt. Don Tetzlaff

cc: Col. Wolstad
Capt. Sharp

DT:cll

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU 99801

March 22, 1977

The Honorable Terry Gardiner
State Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

A copy of the petition from residents of Craig, Klawock, and Hydaburg regarding herring fishing in district 3 has been received through the Craig Advisory Committee. The petition will be considered by the Board of Fisheries when they meet in Juneau later this week. Through use of the Craig Fish and Game Advisory Committee, the residents of the west coast have expressed their views through the appropriate forum.

While it appears that an additional I & E effort was necessary in this case, I would point out that herring harvesting has been subjected to considerable public review throughout Southeastern in recent years. Articles have appeared in the Ketchikan Daily News, the departments' herring program has been covered in the New Alaskan, all sections of the herring regulations have been annually open for public review through the Advisory Committee and Board of Fisheries processes, and the staff has spent many hours making presentations to various public groups. The efforts may not have been totally adequate, but they have been extensive. In this regard, however, the staff will make additional effort to initiate more contact with the west coast communities.

The winter herring fishery has been open throughout Southeastern Alaska since 1970, except those areas designated for roe herring harvest. In district 3 significant harvests have taken place over the last four years. Harvests have taken place in Boca De Finas, Sea Otter Sound, and El Capitan until this year, when populations were also fished in Port Alice, Trocadero Bay, and Sea Otter Harbor.

The harvests have ranged from 820,000 pounds in 1974 to 2.3 million pounds this season. Expansion of the harvest has occurred as the result of gaining

biological information on some stocks and locating stocks in areas which have not been previously fished. A breakdown of the 76-77 herring harvest from the west coast area is as follows:

District	Location	Poundage
District 3	Boca De Finas	974,000
	El Capitan Pass	268,000
	Sea Otter Sound	471,000
	Port Alice	138,000
	Trocadero Bay	270,000
	SUBTOTAL	2,171,000
District 4	Sea Otter Harbor	125,000
	TOTAL	2,295,000

Surveys of the area were conducted by the Department vessels Kittiwake and Sundance and the National Marine Fisheries Service vessel John H. Cobb. All populations fished were not assessed due to distributional patterns of the fish within the fishing area. Substantial populations are frequently found in broken scattered schools which cannot be assessed acoustically. In these cases limited harvests of approximately 100 tons are permitted on the basis of the fishermans' assessment, if it appears the stock is large enough. The area is then closed until the department can assess and if an assessment cannot be obtained, the area is not reopened. If assessment is accomplished, the area is reopened to permit a 10-20% fishing mortality on the stock. This conservative approach has been instrumental in developing the herring fishery as the fishermen and the department work quite closely in locating stocks and begin to gain a reasonable knowledge of the health of that stock. This policy has been uniformly applied to all areas of Southeastern.

Close contact is maintained with the fishermen participating in the herring fishery by the management and research staff and it is our view that the fishery has been conducted with few, if any, violations. A relatively small number of vessels are involved in the fishery at any one time and no loads of herring were delivered that we were not confident of the source.

Emergency orders were written on five occasions establishing closures in district 3 as allowable quantities were taken in various areas. Copies of these emergency orders are sent to all Fish and Wildlife Officers in Southeastern Alaska. In Ketchikan the Fish and Wildlife Protection Office was called at the

time the emergency order was promulgated. These calls are logged in our Ketchikan office.

As previously indicated, we will make an additional effort to discuss herring management with the people on the west coast and the entire issue will have benefit of a Board review in the near future. Should you require additional information, I would be glad to furnish you with whatever may be needed.

Sincerely,

for James W. Brooks
Commissioner

House Judiciary
February 24, 1977

The meeting was called to order at 7:15 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Brown and Elaison. Mr. Specking and Mrs. Rudd were absent.

HB 111 Stream surveillance for fisheries violations HB 111

Mr. Osterback, who is a sponsor for this bill, was here to speak in support of the bill. He said that the intent of the bill is to help save Alaska's resources.

Colonel Fred Wolstad and Frank Sharp from the Division of Fish and Wildlife Protection of the Dept. of Public Safety were here to testify. Mr. Sharp indicated that a "stake-out" crew is vital in order to catch stream robbers. He feels that this bill, in that it would require that those attempting to catch violators remain in plain site, would make it difficult to catch many violators, and therefore would do more harm than good for the resources of Alaska. The Department of Public Safety apparently feels that the "stake-out" crew is their most effective tool.

The committee felt that they would need to receive more information before they could come to a decision on this bill. Specifically, they wanted such information as the number of fish confiscated by "stake-out" crews, number of fish caught from 1960-1975, etc, in order to get a feel for the role of the "stake-out" crew vs. the stream guards.

This bill will be considered at a later date.

The meeting was adjourned at 8:45 p.m.

Representative Gardiner

1968

CLOSED WATERS CASES		STATEWIDE	TOTAL 130 (Persons)
Southeast	29		
Bristol Bay	58		
Kenai	18		
Kodiak	3		
Sand Point	6		
Seldovia	2		
Cordova	2		
Valdez	2		
TOTAL	130		

Southeast	29
Bristol Bay	58
Cook Inlet	20
Kodiak	19
Prince William Sound	4
TOTAL	130

1970

CLOSED WATERS CASES	STATEWIDE	TOTAL 106 (Persons)
Southeast	53	
Bristol Bay	23	
Kodiak	14	
Sand Point	3	
Anchorage	1	
Bethel	2	
Kenai	2	
Homer	4	
Soldotna	4	
TOTAL	106	

Southeast	53
Bristol Bay	23
Kodiak	17
Cook Inlet	11
Arctic - Yukon Kuskokwim	2
TOTAL	106

1973

CLOSED WATERS CASES	STATEWIDE	TOTAL 73 (Persons)
Southeast	52	
Kodiak	10	
Cook Inlet	3	
Prince William Sound	5	
Bristol Bay	2	
Arctic - Yukon Kuskokwim	1	
TOTAL	73	

Total cases statewide all resources 665

Total fines 113,932 Net fines 43,107

1974

CLOSED WATERS CASES	STATEWIDE	TOTAL 61 (Persons)
Southeast	32	
Kodiak	15	
Cook Inlet	6	
Prince William Sound	2	
Arctic - Yukon - Kuskokwim	5	
* Bristol Bay	1	
	61	

* Poor runs in Bristol Bay limited fishing efforts

Total cases statewide all resources 882

Total fines 154,482 Net fines 92,854

1975

CLOSED WATERS CASES

STATEWIDE

TOTAL 167 (Persons)

* Southeast	11
Bristol Bay	125
Kodiak	20
Arctic - Kukon - Kuskokwim	1
Cook Inlet	7
Prince William Sound	3
TOTAL	167

* Salmon Purse Seine Fishery restricted to three 36-hour fishing periods 1975 season.

Total cases statewide all resources 1,306

Total fines 261,417 Net fines 126,687

02-0918

STATE
of ALASKA

MEMORANDUM

TO: Col. Fred M. Woldstad
Director
Fish & Wildlife Protection
Anchorage

DATE : February 16, 1977

FROM: Capt. Frank W. Sharp F.W.S.
Coastal Operations Commander
Fish & Wildlife Protection
Anchorage

SUBJECT: 1976 Commercial
Fisheries Programs

In response to your request for information as to enforcement programs in commercial salmon fisheries during Fiscal 1976, the following is submitted.

The Alaska Department of Public Safety, Fish and Wildlife Protection enforcement programs for commercial salmon fisheries from the 1976 season beginning in May of 1976 and running through October 1976, by area.

ARCTIC/YUKON/KUSKOKWIM

Officer Henslee of Mcgrath was sent TDY to Bethel. One probationary Fish and Wildlife Officer, John Kinzy of Bethel, and one temporary employee, Mike Schumacher, were also assigned to this fishery, this area consisting of the lower Yukon and Kuskokwim Rivers west of the Kilbuck Mountains. Officer Henslee, flying a state-owned Cessna 180 aircraft on floats, was responsible for the placement of the two other personnel who were assigned. A 24 foot river skiff powered by a 50 H.P. Mercury outboard was used out of Bethel on the upriver and downriver patrols during open and closed fishing periods on the Kuskokwim. The entire program consisted primarily of a combination of Officer Henslee's flying the fishing areas, both alone and accompanied by one of the other Officers, or two of the Officers patrolling the Kuskokwim River out of Bethel in the river skiff. Not having a boat on the lower Yukon, no patrols were made by boat in that area. Considering that to cover this assigned area by 180 aircraft it takes five to six hours of flying, considerable flying was done to try and cover all the areas where fishing occurs.

MANPOWER AND EQUIPMENT - LOWER YUKON AND KUSKOKWIM

2 Permanent Officers.
1 Temporary Officer.
1 24 ft. River Skiff and 50 H.P. Outboard.
1 Cessna 180 Aircraft on Floats.

Total: 2 Temporary Man Months.

UPPER YUKON/UPPER KUSKOKWIM/TANANA RIVERS

These fisheries were handled out of the Fairbanks, Bettles and Delta stations utilizing the seven permanent officers stationed in these posts. Patrols were made by float equipped Supercub and wheeled Supercubs stationed in Fairbanks, Delta and Bettles. Limited use of a riverboat out of Fairbanks was used in fisheries located near the road system. Patrols were almost exclusively by officers in aircraft. Since the area they must cover is equal to the size of six large states and the fisheries are located along several hundred mile stretches of these rivers, it requires long hours of flying to monitor these fisheries. In addition, the time period of the commercial fisheries coincides with heavy activity in the sport fish and game resources.

NORTON SOUND

This fishery was handled by one permanent officer out of Nome who is assigned one temporary employee during June and July. Patrols are made by the use of a twenty-one foot Boston Whaler boat powered by two eighty-five horsepower outboards. Some aircraft use was also utilized.

MANPOWER AND EQUIPMENT - NORTON SOUND

1 Permanent Officer.
1 Temporary Officer.
1 Twenty-one foot Boston Whaler outboard powered boat.

Total: 2 Temporary Man Months.

KOTZEBUE SOUND

One permanent officer stationed at Kotzebue. Patrols are made using a nineteen foot Boston Whaler boat powered by a single outboard motor. Some aircraft patrols were utilized.

MANPOWER AND EQUIPMENT - KOTZEBUE SOUND

1 Permanent Officer.
1 Nineteen foot Boston Whaler outboard powered boat.

No Temporary Man Months Assigned.

BRISTOL BAY (NAKNEK - KVICHAK - EGEGIK)

The Bristol Bay fishery consisted of two permanent officers stationed at King Salmon. In addition, during the peak of the fishery (June 15th through July 15th) eight permanent officers from Anchorage were assigned temporary duty to the Bristol Bay Enforcement Program alternating employees so that coverage would be guaranteed at the peak of this fishery. Patrols were made using State Supercub aircraft, one equipped with wheels and one equipped with floats. In addition, a twenty-one foot Boston Whaler equipped with a single one hundred and thirty-five horsepower outboard and a seventeen foot Boston Whaler outboard powered boat

borrowed from the Alaska Department of Fish & Game were used to patrol the waters. Early in the season the new outboard broke down causing efforts to be primarily by aircraft. An inflatable rubber boat was also used several times for running river fisheries.

MANPOWER AND EQUIPMENT - BRISTOL BAY (NAKNEK - KVICHAK - EGEGIK)

2 Permanent Officers.
8 Permanent Officers (TDY June and July).
2 State-owned Supercub aircraft.
1 Twenty-one foot Boston Whaler outboard powered boat.
1 Seventeen foot Boston Whaler outboard powered boat.

No Temporary Man Months Assigned.

BRISTOL BAY (NUSAGAK - TOGIAK - HAGMEISTER ISLAND - GOODNEWS BAY)

One permanent officer stationed at Dillingham and two temporary officers were used in this fishery with TDY permanent personnel assigned periodically throughout the fishing period. A State-owned Supercub aircraft on floats, a nineteen foot Boston Whaler outboard powered boat and a leased thirty-two foot Bristol Bay gill net-type vessel were used in this fishery. Officer Blodgett flew the aircraft and the vessel was run by the temporary officers. The leased thirty-two foot vessel towing the nineteen foot Whaler would be assigned to fishing areas and the temporaries would patrol the area in conjunction with Officer Blodgett in the aircraft. These temporary employees were also used as stream guards in the Lake Togiak silver fishery living at the cannery and patrolling the up river areas for illegal fishing.

MANPOWER AND EQUIPMENT - BRISTOL BAY (NUSAGAK - TOGIAK - HAGMEISTER ISLAND - GOODNEWS BAY)

1 Permanent Officer.
2 Temporary Officers.
1 Thirty-two foot gill net vessel.
1 State-owned Supercub aircraft.
1 Nineteen foot outboard powered boat.

Total: 4 Temporary Man Months.

KODIAK

This fishery is one of the more complex and varied fisheries. The large area, number of streams involved, and the type of fisheries ranging from salmon, crab and shrimp make enforcement difficult. Four permanent officers from the Kodiak post and in addition, two permanent officers stationed aboard the sixty-five foot patrol vessel "Trooper" made up the personnel assigned with this fishery for a total of six permanent officers. In addition, throughout the summer a total of nine temporary employees worked out of Kodiak during July and August. These temporary employees were used in many varied ways. From use as a stake-out crew, stream guards, boat operators, go-fors and maintenance repairmen. Patrols and enforcement activity in Kodiak varied from the use of a State Grumman Goose stationed in Kodiak, transporting men and equipment to and from temporary and permanent base camps and vessels, to the use of the sixty-five foot patrol vessel as a patrol unit and utilizing a seventeen foot Boston vessel

carried to patrol inner bays and areas while the larger patrol vessels sailed onto a point where the skiff would rendezvous with the larger patrol vessel. Also, a thirty-five foot seine boat-type vessel, which we leased from the Kodiak High School each year, was used in the same manner. Captained either by a permanent or temporary officer and accompanied by one temporary officer, they are deployed the areas where they act as a stream guard concept or as a patrol vehicle using a seventeen foot Boston Whaler to more quickly cover the area. They also move and supply stream guard or stake-out camps in their area. A twenty-five foot Bertram patrol vessel, captained either by a permanent or temporary officer, operated in its assigned area during each period either as a stream guard or a patrol unit. Also, moving and supplying other stream guards or stake-out camps. A twenty-one foot Boston Whaler outboard powered boat is used in a similar manner and as a stream guard boat for two temporary personnel who work from permanent visible camps where assigned. By working a combination of efforts utilizing the available manpower and equipment, the Detachment Commander attempts to provide coverage to the fisheries so as to protect the resource and to apprehend the serious violator while providing other public services.

MANPOWER AND EQUIPMENT - KODIAK

6 Permanent Officers.
9 Temporary Officers.
1 Aircraft Pilot.
2 Civilian Boat Officers (1 Captain and 1 Engineer for the sixty-five foot vessel).
1 Sixty-five foot State-owned patrol vessel.
1 Twenty-five foot Bertram inboard/outboard boat.
1 Twenty-one foot Boston Whaler outboard powered boat.
2 Seventeen foot Boston Whaler outboard powered boats.
1 Grumman Goose aircraft.

Total: 24 Temporary Man Months.

SANDPOINT

One permanent officer stationed in Sandpoint and four temporary employees during July and August. In addition, an airplane pilot was hired to fly a State-owned Grumman Goose for patrol and to supply and move manpower and equipment. The sixty-five foot patrol vessel "Enforcer" manned by one permanent officer and two civilian people was also assigned to the Alaskan Peninsula this past summer. The aircraft was used as a patrol unit transporting men and equipment and supplying stream guard and stake-out camps, and the large patrol vessel, the "Enforcer," was used as a patrol unit as was its seventeen foot Boston Whaler. This unit covering the entire fisheries from False Pass to Chignik during its temporary assignment on the Alaskan Peninsula. During the peak of the salmon run it acted as a stream guard unit anchoring in prime fish areas to prevent loss of salmon escapement. The Grumman Goose aircraft and the vessel were used to transport and supply stream guard and stake-out camps as well as individual patrol units. The overall enforcement program for the Peninsula being the responsibility of the Detachment Commander stationed in Kodiak, but the day to day enforcement activities directed by the Corporal who was stationed in Sandpoint.

MANPOWER AND EQUIPMENT - SANDPOINT

1 Permanent Officer.
4 Temporary Officers.
1 Permanent Officer (TDY aboard the vessel "Enforcer").
1 Sixty-five foot vessel the "Enforcer."
1 Aircraft Pilot.
1 State-owned Grumman Goose.
1 Seventeen foot Boston Whaler outboard powered boat.

Total: 8 Temporary Man Months.

COOK INLET

The Cook Inlet fishery was handled by five of the seven permanent officers stationed on the Kenai Peninsula at Soldotna, Homer, and Seward. A twenty-five foot Bertram patrol boat which is normally trailered to launching sites on the inlet was used only once due to a major breakdown of the vessel. A four wheel drive vehicle is a major enforcement tool for the set net fisheries on the beaches of Cook Inlet and the only accessible way to contact these individuals. Contact is made with the use of an Avon inflatable boat. A State-owned Supercub aircraft and charter aircraft provided the necessary air coverage. Four temporary officers were hired to assist the permanent officers. These temporaries are used to contact the set netters along the beaches in the commercial fisheries and as contacts with the flood of sport fishermen who come to the Kenai to sport fish during the summer.

MANPOWER AND EQUIPMENT - COOK INLET

5 Permanent Officers.
4 Temporary Officers.
1 State-owned Supercub aircraft.
1 Leased 4 X 4 four wheel drive vehicle.
1 Avon inflatable raft outboard powered.

Total: 9 Temporary Man Months.

PRINCE WILLIAM SOUND (CORDOVA, VALDEZ AND WHITTIER)

One permanent officer in Cordova, two permanent officers in Valdez and two permanent Protection officers TDY from Soldotna at Whittier comprised the permanent staff assigned to Prince William Sound commercial fisheries. A total of six temporary employees were assigned to Prince William Sound -- three to Cordova, two to Valdez and one to Whittier. Their duties consisted of running small boats for patrol purposes and as stream guards and stake-out teams and as second officers aboard the thirty-eight foot patrol boat stationed out of Valdez. The smaller boats used in these operations were two twenty-one foot Boston Whaler outboard powered boats and two nineteen foot Bellboy outboard powered boats. These boats were assigned patrol areas throughout the season using either two temporary or one temporary and one permanent officer to each boat. As determined by projected needs to best protect the resource, these units often act as a stream guard operation. That

is, living in plain sight to prevent the taking of salmon bound for escapement in that stream. In some instances, stake-out concept is also used. A State-owned Dehaviland Beaver aircraft was stationed in Cordova flown by the Cordova officer throughout Prince William Sound both for patrol and transporting stream guard, stake-out and supplying vessel operations. Also, working in conjunction with the patrol boats both in Valdez and Whittier and other patrol units. The coordination of this program being supervised by a man in field. The assistance and cooperation of the Fish & Game area management fisheries biologist at Cordova was a major contributor to the enforcement activities within the Sound. The thirty-eight foot vessel Balaena out of Valdez operated in the fishery with one permanent Valdez officer and one temporary officer aboard and occasionally with the second permanent officer on board. A nineteen foot Bellboy was also used as a patrol vessel usually with the second permanent officer from Valdez operating it so as to cover more area. Both vessels were used for patrol and in stream guard operations and for supplying and transporting of stake-out crews and stream guards to vulnerable areas. In addition, two permanent officers on temporary duty assignment from Soldotna were sent to Whittier utilizing a nineteen foot Bellboy, they worked much of the northern areas of Prince William Sound in conjunction with the Valdez and Cordova officers' aircraft and vessels.

MANPOWER AND EQUIPMENT - PRINCE WILLIAM SOUND (CORDOVA, VALDEZ AND WHITTIER)

5 Permanent Officers.
6 Temporary Officers.
1 Thirty-eight foot patrol boat.
2 Nineteen foot outboard powered patrol boats.
1 State-owned Dehaviland Beaver aircraft.

Total: 12 Temporary Man Months.

YAKUTAT

One permanent officer and one temporary officer. Enforcement activities consisted of the permanent and temporary officers working together using charter aircraft and a thirteen foot outboard powered boat to conduct patrols. Use of a canoe was also undertaken in the upwater areas. Most enforcement was done through personal contact at fish camps.

MANPOWER AND EQUIPMENT - YAKUTAT

1 Permanent Officer.
1 Temporary Officer.
1 Thirteen foot Boston Whaler outboard powered boat.
Charter aircraft

Total: 3 Temporary Man Months.

SOUTHEAST

Excluding Yakutat, Southeastern Alaska has six Fish & Wildlife stations. These being located at Juneau, Haines, Sitka, Petersburg, Wrangell and Ketchikan. Juneau has two permanent officers, Haines - one permanent officer, Sitka - one permanent officer, Petersburg - one permanent officer, Wrangell - one permanent officer and Ketchikan - two permanent officers. Ten temporary employees were hired for the Southeastern Detachment during the salmon seasons.

Four of these temporaries were assigned to a roving patrol unit. This being seventeen foot Boston Whaler outboard boats. One of these teams and boats assigned to northern Southeastern waters (Juneau to Petersburg) and the other to the southern portion of Southeastern Alaska (Ketchikan to Petersburg). Their prime duty is to patrol the fishing areas within an assigned area measuring gear, checking licenses and permits, and as stream guard and stake-out team members depending on the priorities. These team members ran these boats throughout the assigned areas as scheduled by the Detachment Commander and the post officer where they were operating out of at any particular time. They traveled and lived in these skiffs throughout the seasons camping on the beaches with the equipment they carry aboard. They may at any time be directed to travel to a given area and act as a stream guard team for a particularily vulnerable stream or to tie up their boat and to act as a stake-out team on a predetermined stream for a period of time. However, always returning to the roving patrol concept upon completion of their assignments. The remaining six temporary employees were assigned one to each of the post stations to assist the post officers in carrying out patrol activity including assisting in the operation of the two thirty-eight foot Bertrams, one stationed in Ketchikan and one in Juneau, and operating smaller outboard boats for patrol work. Due to the small number of temporaries available, it was often necessary to use single-man teams both for stream guards and stake-out programs. In other instances, temporaries from one post would be joined with a temporary from another post to make a team both for their safety and for the corroboration of any evidence obtained. As in other areas of the State, the manpower and equipment available, such as vessels, aircraft and personnel, are dispersed into the fishing areas usually after consultation with the area management biologist as to salmon runs in particular areas, expected activities and other known problem areas. Beginning with the Haines post, the enforcement program called for the post officer to operate a twenty-five foot Bertram patrol craft in the fisheries of Upper Lynn Canal. At times he would be accompanied by the temporary employee or in other cases, having the temporary fulfilling duties in other areas of the district. Charter aircraft was used throughout the season. In Juneau one permanent officer operating a thirty-eight foot Bertram, and a temporary employee to assist, patrolled the waters north of Seymour Canal, Icy Straits, portions of Lynn Canal and Chatham Straits south to Kelp Bay. Wherever fisheries existed in this area the thirty-eight foot Bertram was the vessel used in these fisheries. The second permanent officer, the Detachment Commander, also assisted in making patrols both by aircraft and vessel. The Petersburg officer, utilizing the twenty-five foot Bertram patrol craft, patrolled all the waters north of Wrangell Narrows including Frederick Sound, Stephans Passage to Seymour Canal, and the mainland (the eastern shore) of Admiralty Island to Tyee. A floating Wannigan, located at Pybus Bay, was used as a fuel depot and living quarters for the vessel crew so that it was able to operate in the center of the fisheries The temporary employee assisted the officer in the operation of the vessel and acted as a stream guard and stake-out team. Air charter services were used for air surveillance. The Sitka officer, using a twenty-two foot outboard powered boat, was responsible for Peril Straits, Lower Chatham Straits, the outer waters of Baranof and Chichagof Islands. The use of temporary manpower was to assist the officer in the operation of the vessel and as stream

guard and stake-out teams. Air charter services were used for air surveillance programs. The Wrangell officer, using a twenty-three foot inboard vessel, delt primarily with the gill net fisheries in Districts six, seven and eight of Sumner Straits and Clarence Straits but was also responsible for the patrol of El Capitan Straits north of Craig. Temporary employees were used both to assist the officer in the operation of the vessel patrols and as stream guard and stake-out teams. Air charter services were used for air surveillance. The Ketchikan officers, one of which was assigned to the thirty-eight foot Bertram patrol vessel, responsible for all waters south of Meyers Chuck to the Canadian border, east to Hyder and Port Steward, British Columbia, and west to three miles offshore of Dall and Prince of Wales Islands including the inside waters to Craig. A floating Wannigan, located in Elbow Bay on Long Island, was used as a fuel depot and living quarters for a stream guard concept program both for the large vessel and for a smaller vessel patrolling the waters of Cordova Bay. Temporary employees were used to assist the officers and as stream guard and stake-out. In both Juneau and Ketchikan, the members of the roving team were at one time or another called in to act as a stream guard or a stake-out team when need required. Charter aircraft was used for air surveillance of these fisheries.

MANPOWER AND EQUIPMENT - SOUTHEAST

8 Permanent Officers.
10 Temporary Officers.
2 Thirty-eight foot Bertram patrol boats.
1 Twenty-two glass-ply inboard/outboard boat.
2 Nineteen foot outboard powered glass-ply boats.

Total: 35 Temporary Man Months.

FWS/rlg

STATE
of ALASKA

MEMORANDUM

TO: Col. Fred M. Woldstad
Director
Fish & Wildlife Protection

Our File: 820.460

DATE : January 7, 1976

FROM: Lt. Donald M. Roberts
Assistant to the Director
Fish & Wildlife Protection
Department of Public Safety

SUBJECT: Tentative Streamguard Program

The following is a guesstimate of the costs of hiring, equipping and maintaining one streamguard for a 10 week period.

EQUIPMENT

Tent, 10 x 12 white wall		100.00
Boat, Avon S-400 Sportboat, 12' 4" (40 h.p. rated)		1,200.00
Motor, 25 h.p. Johnson, Short Shaft, Manual Start		520.00
Coleman Lantern		30.00
Coleman Stove		30.00
Foam Matress		35.00
Tent Frame		200.00
Cooking Utensils		20.00
Gas cans, funnels, misc. gear		100.00
	Sub Total	$2,135.00
Air Charter - Minimum 6 trips including setting up camp		600.00
Food - 10 weeks @ $50.00 per week		500.00
Fuel - White gas, outboard fuel		100.00
	Sub Total	1,200.00
Wages - 10 weeks - 37.5 straight time (hourly rate $5.14) 15 hours overtime		3,084.45
	Total	6,419.45

This figure does not include the cost of training or the cost of maintaining the man in the field. Depending on the number of streamguards in the field, it will take one to two men to handle engine repairs, buy grocieries, run errands and chauffeur.

MEMORANDUM State of Alaska

TO: ~~Lieutenant Frank Sharp~~
Commercial Fisheries Enforcement
Alaska Dept. Public Safety
Fish and Wildlife Protection
Anchorage

DATE: April 3, 1975

FILE NO:

TELEPHONE NO:

FROM: ~~Norm Johnston~~
Region I Supervisor
Commercial Fisheries Division
Deptment of Fish and Game
Juneau

SUBJECT: C.F. Enforcement-Region I

Copies of ~~your memo~~ have been routed to all offices for comments. In the mean time I would like to repeat what we discussed earlier. As far as Southeastern region is concerned, my staff still feels that the stake-out system has been the most effective method of enforcement for the salmon purse seine fleet. I was invited to talk to the S.E. detachment recently. I voiced my opinion of stake-outs and received the expected response. They plan to continue the program, but it is not a super popular scheme with the officers. It is a pain dealing with temporaries--no one knows this better than I. New, more sophisticated methods appeal to the troopers I realize. Redstone's photo idea sounds good to some I'm sure. It would be easier for one thing. My suggestion, however, is to run an aggressive stake-out program with as much funding as possible. The new approaches can be run on a limited experimental basis if desired, but I don't feel that stake-outs should be phased out unless a proven substitute is available. Aircraft patrols and fast speed boats do not catch creek robbers. We both know this.

The gillnet team idea seems to work and should be continued. When the gillnet mesh restriction program goes into effect, extra effort will be needed. Our staff is instructed to assist your men in this regard with support facilities and personnel as available. We realize that this new regulation will create enforcement problems for which you are not budgeted.

cc: Area Management Biologists
Rosier

NJ:mo

RG3072

TERRY GARDINER
STATE REPRESENTATIVE
POUCH V
JUNEAU
99811

BOX 1092
KETCHIKAN
99901

Alaska State Legislature

February 8, 1977

Avrum Gross
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

Dear Mr. Gross:

There is an extreme amount of concern among my constituents regarding the prosecution and conviction of fish and game violations.

It was recently suggested during my trip to Ketchikan on February 4 and 5 that one possible solution may be to establish some expertise in fish and game violations within the District Attorney's or Attorney General's offices. The possibility was suggested of forming a small group of district attornies whom would specialize in prosecuting fish and game violations throughout the state. I would appreciate your comment on the feasibility of the concept.

Also, I would like to have a brief report of the following:

1.0 Number of fish and game violations and complaints filed in 1976
2.0 Number which resulted in prosecution
3.0 Number of convictions along with the sentences received for the violations
4.0 A brief analysis regarding the reasons for the unsuccessful conviction and whether or not the case was judge or jury tried
5.0 A break down of the violations, prosecutions and convictions by area within the state. A judicial district break down would be sufficient.

I would appreciate your candid comments of whether the numbers of fishery violations which are not successfully prosecuted through conviction are a result of a lack of experience on the investigation level by the officers involved, or a lack of expertise on the part of the district attorneys prosecuting the cases.

Sincerely,
Terry

Terry Gardiner
State Representative
Alaska Legislature

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

JAY S. HAMMOND, GOVERNOR

RICHARD L. BURTON
COMMISSIONER

DIVISION OF FISH AND WILDLIFE PROTECTION / *POUCH K – JUNEAU 99811*

R.R. 3, Box 3048-1
Juneau, Alaska

March 4, 1977

The Honorable Terry Gardner
House of Representatives
Pouch V
Juneau, Alaska

Dear Mr. Gardner:

Per your request the attached list is the total number of fish that were seized during 1976 by officers within this detachment (all of S.E.).

As you will notice only two (2) fish were seized from defendants who were fishing in closed waters.

The one case where 679 pounds of salmon was seized, the salmon was sold to the cannery and the check from same was deposited in the state's general fund. All other cases where individual fish or small quantities of fish were seized the fish are distributed to non-profit organizations such as the State Correctional Institution, Childrens Home, Receiving home, and to people on welfare and/or those people to old to fish and in need, such as the older people of Klukwan.

If I can be of further assistance in this matter, please advise me.

Sincerely,

Don Tetzlaff

Lt. Don Tetzlaff
Commander "B" Detachment
Fish and Wildlife Protection
Juneau, Alaska

cc: Col. Woldstad
Capt. Sharp

DT:cl
Enclosure

OFFENSE	FISH	AREA
Failure to attend subsis. net	1 Sockeye Salmon	Haines
Failure to mark subsis net	1 Sockeye Salmon	Haines
Fishing w/o Limited Entry permit	Fish ticket H224151 679 lb. salmon	Haines
Comm. Fishing w/o gear license	Fish ticket H224151 679 lb. salmon	Haines
Caused gear to operated illegally	Fish ticket H224151 679 lb. salmon	Haines
Did not personally assist in operation of gear	Fish ticket H224151 679 lb. salmon	Haines
Take illegal salmon	1 King Salmon 23"	Juneau
Take illegal salmon	1 King Salmon 24"	Juneau
*Comm. fish closed area	1 King & 3 Silver Salmon	Lena Cove
Take illegal salmon	1 King Salmon 20"	Juneau
*Take salmon closed area	1 King Salmon 20 lb.	Juneau
Take illegal Halibut	6 Halibut undersize	Juneau
Take illegal salmon	1 King Salmon 24"	Juneau
Sport fish w/o license	1 Pink Salmon	Craig
Sport fish w/o license	3 salmon & 1 cod	Klawock
Sport fish w/o license	1 Steelhead 35"	Ketchikan
Comm. fish w/o troll gear lic.	13 salmon	Craig
Undersize Halibut	3 Halibut	Peril Strait
Undersize Halibut	4 Halibut	Icy Strait/Rock Is.
Undersize Halibut	7 Halibut	Klokachef Island
Undersize King Salmon	1 King Salmon 16"	Sitka
Sport fish w/o license	3 Cut Throat	Petersburg
Undersize Halibut	2 Halibut undersize	Pybus Bay
Undersize Halibut	2 Halibut undersize	Pybus Bay
Block salmon stream w/net	4 Red salmon	Yakutat

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER
JUNEAU

March 2, 1977

The Honorable Terry Gardiner
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Terry:

I received a copy in the mail of your request for Fish and Wildlife statistics to Attorney General Gross. Attached for your use is information which will answer most of your questions, including a computer printout.

If you need additional information, please advise me.

Sincerely,

Dick

Richard L. Burton
Commissioner

Attachments

02-0018

STATE
of ALASKA

MEMORANDUM

TO: Richard L. Burton
Commissioner

DATE : March 1, 1977

FROM: Bill Brown, Supervisor
Records & Identification

SUBJECT: Fish & Wildlife Violation Statistics

The attached report contains violations for which individuals were cited in 1976 and for which final court dispositions have been received. Dispositions have not been received for all 1976 citations, therefore, this report does not reflect complete statistics, but only approximately 90 to 95 percent of the total.

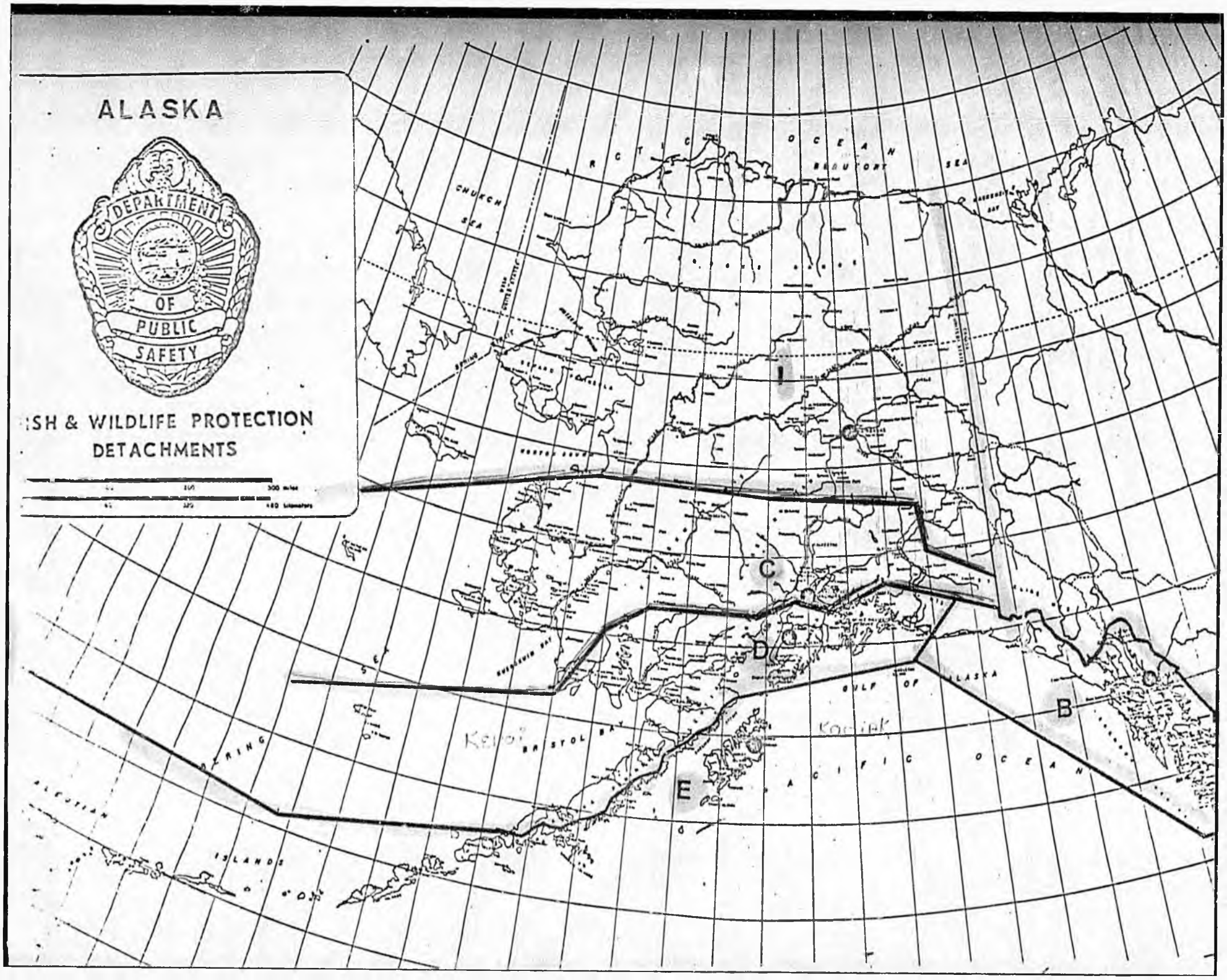
The attached report is broken down by Detachment and type of violation. The middle columns headed "Fine" and "Jail" reflect the sentence received for those found guilty. The right hand column headed "verd" is the final verdict. In the verdict column number 1 reflects guilty; number 2 reflects not guilty; and a blank reflects the individual did not go to court, (which could be because defendant was a juvenile; deferred prosecution; DA declined prosecution; etc.).

In regard to item 2 in Representative Gardiner's letter - this is not available on the computer run. I'm not sure exactly what figure he is reaching for. By pulling each individual case report from file we could manually tally how many cases had a prosecuting attorney, (which several cases do not due to the location where the defendant appears in court and the officer must present the case). I'm not sure a hand tally would reflect how many cases the DA declined prosecution. I estimate the hand tally would take at least one month, unless the clerk's entire effort was switched to this one project.

Following is a list of violations broken down by each catagory and Detachment. These include 100 violation reports with dispositions which have been received in R & I, but not keypunched, therefore, not included in the attached computer printout.

DETACHMENT:	B	C	D	E	I	TOTAL
CATAGORY						
Commercial Fish	87	45	273	143	4	552
Sport Fish	86	194	400	43	52	775
Game	30	82	98	19	70	299
Other	4	8	11	3	13	39
TOTAL	207	329	782	208	139	1665

Attached is a map reflecting what areas fall within each Detachment.


ALASKA
DEPARTMENT OF PUBLIC SAFETY
ISH & WILDLIFE PROTECTION
DETACHMENTS
A
B
C
D
E
ARCTIC OCEAN
BEAUFORT SEA
CHUKCHI SEA
BERING SEA
ALEUTIAN ISLANDS
GULF OF ALASKA
PACIFIC OCEAN
BRISTOL BAY
Kotzebue
Kodiak

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
B	CF01	B7603434T		33310A12	BOUTANG	SIS SIS		3	0829	SITKA	PURSE SEINE CLOSED A	11367	1
B	CF01	B7603432T		33310A12	BOUTANG	SIS SIS		3	0829	SITKA	PURSE SEINE CLOSED A	11366	1
B	CF01	B7603431T		33310A12	BOUTANG	SIS SIS		3	0829	SITKA	PURSE SEINE CLOSED A	11328	1
B	CF01	B7603075J		33310B5	CAIN	02500150		1	0703	JUNEAU	C/F CLOSED ARES	7884	1
B	CF01	B7602089H		1605060	DEANER	03000200			0927	HAINES	C/F CLOSED WATERS	11173	1
B	CF01	B7602088N		1605060	DEANER	03000200		3	0927	HAINES	C/F CLOSED WATERS	11172	1
B	CF01	B7602082H		333501P	RUDDELL	02250225		3	0712	HAINES	COMM FISH CLOSED WAT	11161	1
B	CF01	B7602081H		333501P	RUDDELL	01500150		3	0712	HAINES	COMM FISH CLOSED WAT	11162	1
	CF01	B7602080H		333501P	RUDDELL	04250425		3	0712	HAINES	COMM FISH CLOSED WAT	11163	1
	CF01	B7600167Y		30331	GARRISON	00500025		1	0713	YAKUTAT	BLOCK SALMON STREAM	7183	1
	CF02	B7600170Y		3032028	VALENTINE	10000250		1	0830	YAKUTAT	COMM FISH CLOSED PER		1
	CF02	B7600169Y		3032028	VALENTINE	10000500		1	0830	YAKUTAT	COMM FISH CLOSED PER		1
B	CF02	B7600172Y		3032028	VALENTINE	10000500		1	0830	YAKUTAT	COMM FISH CLOSED PER		1
B	CF02	B7600171Y		3032028	VALENTINE	SIS		1	0830	YAKUTAT	COMM FISH CLOSED PER		1
B	CF02	B7600319P60		33310A	RUSSELL	02500125		3	0810	FOOLS INL	COMM FISH CLOSED PER		1
B	CF02	B7600319P50		33310A	RUSSELL	02500125		3	0810	FOOLS INL	COMM FISH CLOSED PER		1
B	CF02	B7600319P40		33310A	RUSSELL	02500125		3	0810	FOOLS INL	COMM FISH CLOSED PER		1
B	CF02	B7600319P30		33310A	RUSSELL			3	0810	FOOLS INL	COMM FISH CLOSED PER		
B	CF02	B7600319P20		33310A	RUSSELL	02500125		3	0810	FOOLS INL	COMM FISH CLOSED PER		1
B	CF02	B7600319P10		33310A	RUSSELL	05000250		3	0810	FOOLS INL	COMM FISH CLOSED PER		1
B	CF02	B7600318P50		33310A	RUSSELL	02500125		3	0810	SOUTHEAST	COMM FISH CLOSED PER		1
B	CF02	B7600318P40		33310A	RUSSELL	02500125		3	0810	SOUTHEAST	COMM FISH CLOSED PER		1
B	CF02	B7600318P30		33310A	RUSSELL	02500125		3	0810	SOUTHEAST	COMM FISH CLOSED PER		1
B	CF02	B7600318P20		33310A	RUSSELL	02500150		3	0810	SOUTHEAST	COMM FISH CLOSED PER		1
B	CF02	B7600318P10		33310A	RUSSELL	05000250		3	0810	SOUTHEAST	COMM FISH CLOSED PER		1
B	CF02	B7600282W		33310B4	LAKE	YAA			0507	WRANGELL	COMM FISH CLOSED PER	7029	
B	CF02	B7602090H		1605060	RUDDELL	02000200	SIS	1	0922	HAINES	C/F CLOSED PERIOD	11169	1
B	CF02	B7602099H		1605060	RUDDELL	02500250		1	0922	LETNIKOF	C/F CLOSED PERIOD		1
B	CF02	B7602097H		1605060	RUDDELL	02500000		2	0922	HAINES	COMM FISH CLOSED PER		1
B	CF02	B7602091H		1605060	RUDDELL	02000200	SIS	3	0922	HAINES	COMM FISH CLOSED PER	11170	1
B	CF02	B7603478K		39390	JOHNSON K	05000200		1	0508	CRAIG	C/F HALIBUT CLOSED S	8085	1
B	CF05	B7600264K		1605665A	JOHNSON	01000100	SIS	1	0121	KETCHIKAN	FALSIFIED C/F LICENS	8079	1
B	CF05	B7600263K		1605665A	JOHNSON	01000100	SIS	1	0121	KETCHIKAN	FALSIFIED C/F LICENS	8078	1
B	CF07	B7602229T01		1605831	BOUTANG	02000100		1	0527	PELICAN A	WASTE SALMON	2100	1
B	CF11	B7601950T		2005100A	BOUTANG	03000150		1	0509	SITKA	NO INT-USE PERMIT	11246	1
B	CF11	B7600347 03		16431409	NICHOLS	01000050		1	0306	JUNEAU	COM FISH W/O INTERIM	7003	1
B	CF11	B7600251K		39130E2	C SEIBEL	DIS		2	0702	KETCHIKAN	EXPORT UNPROCESSED C	8051	2
B	CF11	B7600265K02		39130E2	C SEIBEL	0050		1	1015	KETCHIKAN	EXPORT UNPROCESSED C	8054	1
B	CF11	B7600202H22		1643140	RUDDELL	0250		3	0629	HAINES	COMM FISH W/O ENTRY	11157	1
B	CF11	B7600202H12		1643140	RUDDELL	0250		3	0629	HAINES	C FISH W/O LIMITED E	11159	1
B	CF11	B7603447T		05100A	BOUTANG	03000100		1	1020	SITKA	CF W/O ENTGRY PERMIT		1
B	CF11	B7602261T03		05100A	BOUTANG	10001000		1	0629	DEER HARB	CF W/O ENTRY PERMIT	11196	1
B	CF14	B7600311P		39390	RUSSELL	00200020		1	0723	PYBUS BAY	POSSESSION UNDERSIZE		1
B	CF16	B7600312P		39390	RUSSELL	01000100		1	0723	PYBUS BAY	POSS OF UNDERSIZED H	11285	1
B	CF16	B7602259T		39390	BOUTANG	05000500		1	0702	ICY STRAI	UNDERSIZE HALIBUT	11189	1
B	CF16	B7602258T		39390	BOUTANG	06000300		1	0629	KLOKACHEF	UNDERSIZE HALIBUT	11192	1
B	CF16	B7602229T02		33392	BOUTANG	04000200		1	0527	PELICAN	UNDER SIZE SALMON	2151	1
B	CF16	B7601632J		39390	NICHOLS	05000250		1	0524	JUNEAU	TAKE ILLEGAL HALIBUT		1
B	CF20	B7601940T01		1605550A	BOUTANG	07500250		3	0502	SITKA	COMM FISH W/O GEAR L	11238	1
B	CF20	B7602230T02		1605550A	BOUTANG	07500250		1	0527	PELICAN	COMM FISH W/O GEAR L	2153	1
B	CF20	B7602261T02		1605550	BOUTANG	07500250		1	0629	DEER HARB	CF W/O GEAR LICENSE	11198	1
B	CF20	B7603613W01		1605570	LAKE	01000025		3	0720	WRANGELL	COMM FISH UNLIC GILL	11201	1
B	CF20	B7603703K		1605560	JOHNSON	01500075		1	0802	KETCHIKAN	C/F W/O GEAR LICENSE		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
B	CF20	B7603228C		1605550	SHELTON	02000025		1	0803	CRAIG	COMM FISH W/O TROLL	5080	1
B	CF20	B7600278W02		1605610	LAKE	01500050		1	0319	WRANGELL	C/F UNLIC BEAM TRAWL	0574	1
B	CF20	B7600202H21		1605570	RUDDELL	0250		3	0629	HAINES	COMM FISH W/O GEAR L	11158	1
B	CF20	B7600202H11		1605570	RUDDELL	02500250		3	0629	HAINES	C FISH W/O GEAR LICE	11160	1
B	CF21	B7600278W01		1605510	LAKE	01500050		1	0319	WRANGELL	C/F W/UNLIC VESSEL	0575	1
B	CF21	B7603613W02		1605510	LAKE	01000025		3	0720	WRANGELL	COMM FISH UNLIC VESS	11202	1
B	CF21	B7602261T01		1605510	BOUTANG	07500250		1	0629	DEER HBR	CF W/O VESSEL LICENS	11197	1
B	CF21	B7602230T01		1605510	BOUTANG	07500250		1	0527	PELICAN	COMM FISH W/O VESSEL	2152	1
B	CF21	B7601940T03		1605510	BOUTANG	01250125		3	0502	SITKA	COMM FISH W/O VESSEL	11237	1
B	CF22	B7601940T02		1605480A	BOUTANG	01250125	SIS	3	0502	SITKA	COMM FISH W/O LIC	11236	1
B	CF22	B7600696J		1605480	CAIN	00750050		1	0713	JUNEAU	COMM FISH W/O LICENS	12625	1
B	CF22	B7601943T		1605480A	BOUTANG	07500250	0002	1	0509	SITKA	COMM FISH W/O LICENS	11245	1
B	CF22	B7602255T		1605480A	BOUTANG	03000150		1	0531	TENAKEE S	COMM FISH W/O LICENS	11179	1
B	CF25	B7603222C01		39270A	JOHNSON	02000025		3	0728	HYDABURG	COMM FISH W/MORE THA	8089	1
B	CF25	B7602098H		33331A5	RUDDELL	SIS		1	0913	HAINES	COMM FISH W/OVER LEN	11167	1
B	CF25	B7600201H		3333165	RUDDELL	10250775		1	0630	HAINES	OVERLENGTH DRIFT GIL	11156	1
B	CF31	B7600202H02		1605540	RUDDELL	10000500		3	0629	HAINES	DID NOT PERSONALLY A	11153	1
B	CF31	B7600202H01		1605670C	RUDDELL	10000500		3	0629	HAINES	CAUSED GEAR TO BE OP	11154	1
B	CF32	B7602274T01		1605690	BOUTANG	05000100		3	0528	ELFIN COV	FAIL TO SUBMIT INFO	11350	1
B	CF32	B7602274T02		1605690	BOUTANG	05000100		3	0528	ELFIN COV	SAIL TO SUBMIT INFO	11349	1
B	CF32	B7603446T		1605690	BOUTANG	02000100		1	0817	SITKA	FAIL SUBMIT INFO FIS		1
B	CF40	B7600265K01		32125A	C SEIBEL	01000035		1	0204	KETCHIKAN	UNATTENDED C/F CRAB	8053	1
B	CF42	B7600347J02		35030A	NICHOLS	0025		1	0306	JUNEAU	FAIL TO VALIDATE REG	7002	1
B	CF42	B7600347J01		3502 C	NICHOLS	00250025		1	0306	JUNEAU	COM FISH CRAB W/O RE	7002	1
B	CF42	B7600348J02		35030A	NICHOLS	0025		1	0306	JUNEAU	FAILURE TO VALIDATE	7004	1
B	CF42	B7600348J01		35020C	NICHOLS	00250025		1	0306	JUNEAU	COMM FISH CRAB W/O R	7004	1
B	CF60	B7600247K		1610055	SEIBEL	DIS DIS		2	1212	KETCHIKAN	INTERFERENCE W/COMM		
B	CF61	B7600265K03		32050	C SEIBEL	0050		1	0121	KETCHIKAN	FAILURE TO MARK C/F	8052	1
B	GM02	B7600337J20		81310	BOUTANG	02500100		1	0213	BOUTANG	TAKE DEER CLOSED SEA	6366	1
B	GM04	B7600337J10		1605330A	BOUTANG	02500100		1	0213	BOUTANG	HUNT W/O LIC	6365	1
B	GM04	B7600337J30		1605330A	BOUTANG	02500100		1	0213	JUNEAU	HUNT W/O LIC	6364	1
B	GM04	B7603449T		1605330	BOUTANG	02500025		1	1016	SITKA	HUNT W/O LICENSE	11335	1
B	GM04	B7605214J01		1605330A	FUELLING	00250025		1	1113	JUNEAU	HUNTING W/O LICENSE	10304	1
B	GM05	B7604278K02		1605420A	DEMMERT	00500000	00000000	1	0908	KETCHIKAN	FALSE STATE TO OBT R		1
B	GM05	B7602087H		1605420A	RUDDELL	00500025		3	0831	HAINES	F/STATEMENT ON RES L	11168	1
B	GM08	B7605271T		81015B	BOUTANG	02000100		1	1119	SITKA	FAIL VALIDATE HARVES	4814	1
B	GM08	B7603442T		81015A	BOUTANG	02500025		1	1001	NAKWASINA	TAKE DEER W/O HARVES		1
B	GM10	B7605228J		81340 4	YOUNG	02500050		1	1224	JUNEAU	TAKE WATER FOWL CLOS	11456	1
B	GM10	B7605227J		81340 4	YOUNG	02500250		1	1224	JUNEAU	TAKE WATERFOWL CLOSE	11459	1
B	GM10	B7605214J02		811151	FUELLING	00500050		1	1113	JUNEAU	TAKE WATERFOWL ILLEG	10306	1
B	GM10	B7600307P01		81310	RUSSELL		00020002	1	0622	PETERSBUR	TAKE GOOSE CLOSED SE	11279	1
B	GM10	B7605761J		81240 3D	YOUNG	02500050		1	1129	JUNEAU	HUNTING DUCKS CLOSED	11455	1
B	GM32	B7605381H		81055	RUDDELL	01000050		1	1028	HAINES	FAIL TO CHECK OUT-PE		1
B	GM32	B7605372H		81055	RUDDELL	01000050		1	1028	RUDDELL	FAIL TO CHECK OUT PE		1
B	GM32	B7605265T		81055 1	BOUTANG	01000100	SIS	1	1023	SITKA	FAIL TO REGIST FOR G		1
B	GM32	B7605379H		810551	RUDDELL	01000050		1	1028	HAINES	F/TO CHECKIN-PERMIT		1
B	GM32	B7605378H		81055	RUDDELL	01000050		1	1207	HAINES	PERMIT HUNT-FAIL TO		1
B	GM32	B7605376H		81055	RUDDELL	01000050		1	1028	HAINES	FAIL TO CHECK OUT-PE		1
B	GM32	B7605374H		81055	RUDDELL	01000050		1	1028	HAINES	FAIL TO CHECK OUT-PE		1
B	GM60	B7600294W		81130	LAKE	DIS		2	0814	WRANGELL	POSSESS GAME W/O PER		
B	GM60	B7600352T20		1605920A	BOUTANG			1		PELICAN	TAKE SEALIONS & EAGL		1
B	GM60	B7600352T10		1605920A	BOUTANG			1	0311	PELICAN	TAKE SEALIONS & EAGL		1
B	GM60	B7600352T30		1605920A	BOUTANG			1	0311	PELICAN	TAKE SEA LIONS & EAG		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
B	OR60	B7600306P		1120590C	RUSSELL	01000025		1	0620	PETERSBUR	DEFACING PUBLIC PROP	11276	1
B	OR60	B7600307P02		1120135A	RUSSELL	0050		1	0622	PETERSBUR	ILLEGAL ENTRY		1
B	SG05	B7604310K		1605420A	DEMMERT C	00500050	00000000	1	0607	KETCHIKAN	FALSE STMT TO OBTAIN		1
B	SG05	B7604293K		1605420A	BLODGETT	00280028	00000000	3	0430	KETCHIKAN	FALSE STMT TO OBTAIN		1
B	SP01	B7603702K02		48030D1	JOHNSON	00500050		1	0906	KETCHIKAN	SPORT FISH IN CLOSED		1
B	SP01	B7602266T		42150	BOUTANG	01500050			0717	SITKA	S/F NEAR STREAM BARR	11358	1
B	SP01	B7603086J		48030C4	NICHOLS	01000050		1	0807	JUNEAU	SPORT FISH CLOSED AR	11494	1
B	SP01	B7603426T		42150	BOUTANG	00700035		1	0731	SITKA	SPORT FISH W/IN 300	11326	1
B	SP01	B7603425T		42150	BOUTANG	00700035		1	0731	SITKA	SPORT FISH W/IN 300	11327	1
B	SP01	B7601630J		48060C1	NICHOLS	00250025		1	0601	JUNEAU	TAKE SALMON CLOSED A		1
B	SP03	B7601276W02		42020		00250025		1	0310	WRANGELL	S/F W/OVER 1 LINE	0570	1
B	SP03	B7600619K		42020	JOHNSON	00250025		1	0815	KETCHIKAN	SPORT FISH W/MORE TH		1
B	SP03	B7603430T10		42180	BOUTANG	04000150			0915	FALSE ISL	MOLESTING SALMON	11330	1
B	SP03	B7603430T20		42180	BOUTANG	04000150			0915	FALSE ISL	MOLESTING SALMON	11329	1
B	SP03	B7602265T		42200	BOUTANG	01500050		1	0710	SITKA	SNAGGING SALMON	11354	1
B	SP03	B7602551K		42020	JOHNSON	01000050		1	0627	KETCHIKAN	S/F WITH MORE THAN O	8086	1
B	SP03	B7603717K02		42020	C SEIBEL	00000000			0815	KETCHIKAN	SPORT FISHING W/4 LI	4800	
B	SP03	B7600188H		42180	RUDDELL	02000040		3	1112	SKAGWAY	MOLEST SPAWNING FISH		1
B	SP03	B7600187H		42180	RUDDELL	02000030		1	1112	SKAGWAY	MOLEST SPAWNING SALM		1
B	SP03	B7600190H		42010	RUDDELL	02000040		1	1112	SKAGWAY	T/FISH W/GAFF HOOK		1
B	SP03	B7600189H		42180	RUDDELL	02000030		1	1112	SKAGWAY	MOLEST SPAWNING SALM		1
B	SP04	B7600310P		1605330A	RUSSELL	00200010		1	0723	PETERSBUR	SPORT FISH W/O LICEN	11282	1
B	SP04	B7600309P		1605330A	RUSSELL	00200010		1	0723	PETERSBUR	SPORT FISHING W/O LI	11281	1
B	SP04	B7600293K		1605330A	JOHNSON	01000050		1	0605	KETCHIKAN	SPORT FISHING W/O SP	8083	1
B	SP04	B7600281W		1605330A	LAKE	00250025		1	0425	WRANGELL	SPORT FISH W/O LICEN	7028	1
B	SP04	B7600280W		1605330A	LAKE	00250025		1	0425	WRANGELL	SPORT FISH W/O LICEN	7027	1
B	SP04	B7600316P		1605330A	RUSSELL	00500050		1	0801	BEAR CREE	SPORT FISH W/O LICEN	11287	1
B	SP04	B7600313P		1605330A	RUSSELL	00750075		1	0723	PETERSBUR	SPORT FISHING W/O LI	11286	1
B	SP04	B7600333P		1605330A	RUSSELL	00500050		1	1110	PETERSBUR	SPORT FISH W/O LICEN		1
B	SP04	B7600328P		160533A	RUSSELL	00500050		1	0926	OHMER CRE	SF W/O LICENSE		1
B	SP04	B7600327P		1605330A	RUSSELL	00500050		1	0919	PETERSBUR	SPORT FISH W/O LICEN		1
B	SP04	B7600269K		1605330A	C SEIBEL	01000050		1	0411	KETCHIKAN	SPORT FISH W/O LICEN	8008	1
B	SP04	B7600277W		1605330A		00250025		1	0309	WRANGELL	S/F W/O LISC	0572	1
B	SP04	B7600276W01		1605330A		00250025		1	0310	WRANGELL	S/F W/O LISCENSE	0571	1
B	SP04	B7600274K		1605330A	JOHNSON	00500050		1	0501	KETCHIKAN	SPORT FISHING W/O LI	8081	1
B	SP04	B7600270K		1605330A	JONES	01000050		1	0411	THORNE AR	SPORT FISH W/O LICEN	8009	1
B	SP04	B7603717K01		1605330A	SEIBEL	01000100		1	0815	KETCHIKAN	S/F WITHOUT LICENSE	4799	1
B	SP04	B7603702K01		1605330A	JOHNSON	01000050		1	0906	KETCHIKAN	SPORT FISH W/O A LIC		1
B	SP04	B7603698C		1605330A	JOHNSON	00250010		1	0810	CRAIG	SPORT FISHING W/O A		1
B	SP04	B7603697C		1605330A	JOHNSON	00250010		1	0810	KLAWOCK	SPORT FISHING W/O A		1
B	SP04	B7602540K20		1605330A	C SEIBEL	00750075		1	0612	KETCHIKAN	SPORT FISHING WITHOU	8010	1
B	SP04	B7602540K10		1605330A	C SEIBEL	00750075		1	0612	KETCHIKAN	SPORT FISHING WITHOU	8011	1
B	SP04	B7602257T		1605330	BOUTANG	00500050		1	0628	SITKA	SPORT FISH W/O LICEN	11187	1
B	SP04	B7602250T		1605330	BOUTANG	02000075		1	0612	SITKA	SPORT FISH W/O LICEN	11182	1
B	SP04	B7603223C01		1605330A	JOHNSON	00250025		1	0727	CRAIG	SPORT FISH W/O A LIC	8088	1
B	SP04	B7603221K		1605330A	SEIBEL	01000050		1	0802	KETCHIKAN	SPORT FISH W/O LICEN	8013	1
B	SP04	B7602565K		1605330A	C SEIBEL	01000025		1	0706	KETCHIKAN	SPORT FISH WITHOUT L	8012	1
B	SP04	B7601624J		1605330	NICHOLS	01000100		1	0418	JUNEAU	SPORT FISH W/O LICEN	7007	1
B	SP04	B7601938T		1605330	BOUTANG	01500050		1	0502	SITKA	SPORT FISH W/O LICEN	11239	1
B	SP04	B7601936T		1605330	BOUTANG	01500050		1	0502	SITKA	SPORT FISH W/O LICEN	11233	1
B	SP04	B7601935T		1605330	BOUTANG	01500050		1	0502	SITKA	SPORT FISH W/O LICEN	11231	1
B	SP04	B7601648J		16053309	NICHOLS	00400040		1	0626	JUNEAU	SPORT FISHING W/O A	11479	1
B	SP04	B7601644J		16053309	NICHOLS	00250025		1	0627	JUNEAU	SPORT FISHING W/O LI	11478	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
B	SP04	B7602248T		1605330	BOUTANG	02000100		1	0612	SITKA	SPORT FISH W/O LICEN	11181	1
B	SP04	B7602247T		1605330	BOUTANG	01500075		1	0613	SITKA	SPORT FISH W/O LICEN	11184	1
B	SP04	B7602245T		1605330	BOUTANG	02000075		1	0611	SITKA	TAKE RAZOR CLAMS W/O	11180	1
B	SP04	B7602231T		1605330	BOUTANG	01000040		1	0522	SITKA	SPORT FISH W/O LICEN	11250	1
B	SP04	B7601947T		1605330	BOUTANG	WRNT			0508	SITKA	SPORT FISH W/O LICEN	11243	
B	SP04	B7601977T		1605330	BOUTANG	01500050		1	0515	SITKA	TAKE RAZOR CLAMS W/O	11249	1
B	SP04	B7601953T		1605330A	BOUTANG	01500050		1	0515	SITKA	TAKE RAZOR CLAMS W/O	11247	1
B	SP04	B7601952T		1605330A	BOUTANG	01500050		1	0515	SITKA	TAKE RAZOR CLAMS W/O	11248	1
B	SP04	B7602085H		1605330	BERRY	DIS DIS		1	0724	HAINES	SPORT FISH W/O LICEN	11131	
B	SP04	B7602084H		1605330	BERRY	DIS DIS		1	0724	HAINES	SPORT FISH W/O LICEN	11129	
B	SP05	B7601949T		1605420A	BOUTANG	01750175		1	0614	SITKA	FALSE STATEMENT SPOR	11242	1
B	SP05	B7601948T		1605420A	BOUTANG	01000100		1	0614	SITKA	FALSE STATEMENT SPOR	11240	1
B	SP05	B7602083H		1605420A	RUDDELL			2	0419	SKAGWAY	F STATEMENT APLC LIC	6300	1
B	SP05	B7600362J		1605420A	BOUTANG	01250125		1	0611	JUNEAU	FALSE STATEMENT FOR	6373	1
B	SP05	B7600358J		1605420A	BOUTANG	01000100		1	0430	JUNEAU	FALSE STATEMENT ON F	6372	1
B	SP05	B7600357J		1605420A	NICHOLS	01250125		1	0319	JUNEAU	FALSE STATEMENT FOR	7006	1
B	SP05	B7600356J		1605420A	BOUTANG	01000100		1	0412	JUNEAU	FALSE STATEMENT APPL	6370	1
B	SP05	B7600355J		1605420A	BOUTANG	01000100		3	0526	JUNEAU	FALSE STATEMENT APPL	6369	1
B	SP05	B7600354J		1605420A	BOUTANG	01000100		3	0526	JUNEAU	FALSE STATEMENT APPL	6368	1
B	SP05	B7604301K		1605420A	BLODGETT	00500050	SIS	1	0529	KETCHIKAN	FALSE STM TO OBT RES		1
B	SP05	B7604278K01		1605420A	DEMMERT	00500050	00000000	1	0606	KETCHIKAN	FALSE STMT TO OBTAIN		1
B	SP05	B7600199H		1605420A	RUDDELL			2	0419	SKAGWAY	FALSE STATEMENT ON L	11151	1
B	SP16	B7603078J		48060D	NICHOLS	00250025			0710	JUNEAU	TAKE ILLEGAL SALMON	11491	1
B	SP16	B7603077J		48060D	NICHOLS	00250025		1	0710	JUNEAU	TAKE ILLEGAL SALMON	11492	1
B	SP16	B7602249T		48060D	BOUTANG	01500050		1	0612	SITKA	UNDERSIZE KING SALMO	11183	1
B	SP16	B7603899J		48060D	NICHOLS	00250025		1	0619	JUNEAU	TAKE UNDER SIZE SALM	11490	1
B	SP16	B7601631J		48060D	NICHOLS	00500025		1	0521	JUNEAU	TAKE ILLEGAL SALMON	7007	1
B	SP23	B7601236T20		381351	THOMPSON	05000250	0003	3	0301	SITKA SOU	EXCEED ABALONE LIMIT		1
B	SP23	B7601236T10		381351	THOMPSON	05000250	0003	3	0301	SITKA SOU	EXCEED ABALONE LIMIT		1
B	SP23	B7602086H02		39890H	RUDDELL	00250015		1	0730	HAINES	FAIL TO MARK SUBS NE	11165	1
B	SP23	B7602086H01		339906	RUDDELL	00250025		1	0730	HAINES	F/ATTEND SUBSIS NET	11164	1
B	SP23	B7604104W		33980	LAKE	01000025		1	0731	WRANGELL	SUBS FISH W/O PERMIT	11203	1
B	SP23	B7600193H02		33990A6	RUDDELL	DIS DIS		2	0409	HAINES	NOT PRESENT WHILE NE	11165	
B	SP23	B7600193 01		33980	RUDDELL	DIS		2	0409	HAINES	SUB FISH W/O PERMIT	11152	
B	SP23	B7600165		30990	VALENTINE	0250		3	0612	YAKUTAT	SUB FISH CLOSED PERI	7180	1
C	CF01	C76127498		03350D2		DIS		2	0701		COMM FISH CLOSED WAT		
C	CF01	C76127488		03350D2	HENSLEE	DIS		2	0701		COMM FISH CLOSED WAT		
C	CF01	C7614513 02		03350D2	HARPER	DIS DIS		2	0715	BETHEL	COMMERCIAL FISHING I	12664	
C	CF01	C76127508		03350D2		DIS		2	0701		COMM FISHING CLOSED		
C	CF01	C7614513 01		03350D2	HARPER	DIS		2	0715	BETHEL	COMM FISH CLOSED WAT	12665	
C	CF01	C76127518		03350D2	HENSLEE	DIS		2	0701		COMM FISH CLOSED WAT		
C	CF01	C76127528		03350D2	HENSLEE	DIS		2	0701		COMM FISH CLOSED WAT		
C	CF01	C76139928		03350D2		DIS			0715		COMM FISH CLOSED WAT	12663	
C	CF01	C76139918		3200F4				2	0715		COMM FISH CLOSED WAT	12666	
C	CF01	C7613659802		03331C	HENSLEE	02500100		1	0709	ALAKAMUK	BLOCKING STREAM W/NE	12444	1
C	CF01	C7612753 01		03350D2		DIS		2	0701		COMM FISH CLOSED WAT		
C	CF02	C76127567		03320C1	HENSLEE	00500050		1	0702	SHELDONS	COMM FISH CLOSED PER		1
C	CF02	C76127558		03320C1	HENSLEE	07000700		1	0702		COMM FISH CLOSED PER		1
C	CF02	C76127548		03320C1	HENSLEE	02500050		1	0702	ALAKANUK	COMM FISH CLOSED PER		1
C	CF02	C76136558		3320C1	HENSLEE	01000025		1	0709	EMMONAK	COMM FISH CLOSED PER		1
C	CF02	C76136548		03320C1	GEIGER	01000025		1	0628	EMMONAK	COMM FISH CLOSED PER		1
C	CF02	C76136538		03320C1	GEIGER	01000025		1	0628	EMMONAK	COMM FISH CLOSED PER		1
C	CF02	C76136528		3320C1	GEIGER	0100		1	0628	EMMONAK	COMM FISH CLOSED PER		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
C	CF02	C76136568		03320C1	HENSLEE	01000025			0709	EMMONAK	COMM FISH CLOSED PER	12446	1
C	CF02	C76140634		21320A1	DOBSON	03000300		2	0716	ANCHORAGE	COMM FISH CLOSED PER	12351	1
C	CF02	C7613657802		3320C1	HENSLEE	01000025		1	0709	EMMONAK	COMM FISH CLOSED PER		1
C	CF02	C7613657801		03320C1	HENSLEE	01000025		1	0709	EMMONAK	COMM FISH CLOSED PER	12447	1
C	CF11	C7604241A		39130B	ROBERTSON	05000100		1	0214	ANCHORAGE	FAIL TO FILE FISH TI		1
C	CF14	C7613658820		39197	HENSLEE	0200		1	0708	BETHEL	UNLAWFUL PURCHASE OF		1
C	CF14	C7613658810		39197	HENSLEE	01120112		1	0708	BETHEL	UNLAWFUL SALE OF FIS		1
C	CF20	C76136628		05670E	SCHUMACHER	DIS DIS		2	0712	BETHEL	OPERATE GEAR LICENSE		
C	CF20	C76124828		1605570	HENSLEE	02000100		3	0624	GOODNEWS	COMM FISH W/O GEAR L	12483	1
C	CF20	C76136658		1605670E	SCHUMACHER	DIS		2	0712	BETHEL	ALLOW GEAR TO BE OPE		
C	CF20	C7613663802		1605570	SCHUMACHER	DIS		2	0712	BETHEL	COMM FISH W/O GEAR L	12490	
C	CF22	C7613663810		1605480A	SCHUMACHER	DIS		2	0712	BETHEL	COMM FISH W/O LICENS	12485	
C	CF22	C76136648		1605480A	SCHUMACHER	DIS		2	0712		COMM FISHING W/O LIC	12486	
C	CF22	C7613663801		1605480A	SCHUMACHER	DIS		2	0712	BETHEL	COMM FISH W/O LICENS	12484	
C	CF22	C76119348		1605480A	HENSLEE	01000100		3	0623	BETHEL	COMM FISH W/O LICENS		1
C	CF22	C76124848		1605480A	HENSLEE	01000025		3	0624	GOODNEWS	COMM FISH W/O LICENS		1
C	CF25	C7613660		03331D1	HARPER	DIS		2	0712	BETHEL	OVERLENGTH GILL NET		
C	CF25	C7613670		03331D1	HARPER	DIS		2	0712	BETHEL	OVERLENGTH GILL NET		
C	CF25	C7612753 02		03331D1	HENSLEE	DIS		2	0701	BETHEL	COMM FISH OVERLENGTH		
C	CF32	C7613671 20		39130 3B	HARPER	DIS		2	0728	BETHEL	IMPROPER REPORTING		
C	CF32	C7613671 10		39130 3B	HARPER	DIS		2	0728	BETHEL	IMPROPER REPORTING		
C	CF61	C7612746802		03990G2	KINZY	00500050		1	0624	BETHEL	IMPROPERLY MARKED GE	12655	1
C	CF61	C7613659801		03334B	HENSLEE	00250025		1	0709	ALAKAMUK	COMM FISH W/UNMARKED	1243	1
C	CF61	C76119378		3990G2	KINZY	01000100		1	0623	BETHEL	UNIDENTIFIED GEAR BU	12653	1
C	GD50	C7503305A		85420061	MARKHAM			2	0820	ANCHORAGE	UNETHICAL ACTIVITY		1
C	GM01	C76142237A		8125011	ROBERTSON	02000100		1	0715	ANCHORAGE	TAKING BLACK BEAR CL		1
C	GM01	C76180355		81320	MANN	05000100		3	0911	PALMER	TAKING COW MOOSE CLO	12264	1
C	GM01	C7618050A		813208	WELLMAN	DP		2	0906	ANCHORAGE	TAKING GOAT CLOSED A	12730	
C	GM02	C7618372P		813202	STAMAND			1	0922	PALMER	TAKE BEAR CUB	12308	1
C	GM02	C7611765A		813202	T JORDAN	02500250	SIS	1	0620	ANCH	BRN BEAR CLOSED SEAS		1
C	GM02	C7617644A01		813202	JORDAN	02500250	SIS	1	0905	ANCHORAGE	BRN BEAR CLOSED SEAS		1
C	GM02	C7619467701		84270 6	HENSLEE	02000100	00450005	3	1015	ANIAK	TRAPPING CLOSED SEAS		1
C	GM02	C7602844A20		81310	TAYLOR	SIS		1	0215	ANCHORAGE	TAKE MOOSE CLOSED SE	NONE	1
C	GM02	C7602844A10		81310	TAYLOR	SIS		1	0215	ANCHORAGE	TAKE MOOSE CLOSED SE	NONE	1
C	GM02	C7602346P10		81310	V L STEELE	05000000	00600020	1	0131	PALMER	TAKING MOOSE CLOSED	8855	1
C	GM02	C7617915701		813209	HENSLEE	00500050		1	0901	ANIAK	TAKE MOOSE DURING CL		1
C	GM02	C7606051		842706	HENSLEE	00250025		1	0318	ANIAK	TRAP MARTIN CLOSED S		1
C	GM02	C76211744		81320	DOBSON	05000100	00600030	1	1102	PALMER	TAKE COW MOOSE CLOSE	12311	1
C	GM02	C76211754		81320	DOBSON	05000200	00600010	1	1027	PALMER	TAKING COW MOOSE CLO	12370	1
C	GM02	C7617915 02		81320 9	HENSLEE	05000250		2	0901	ANIAK	TAKE MOOSE CLOSED SE		1
C	GM02	C7601176P02		5813209	ST AMAND	DIS			0131	PALMER	MOOSE CLOSED SEASON	8806	
C	GM02	C7601010A		81320	RUSSELL	05000500	0005	1	1222	ANCHORAGE	TAKING CARIBOU OUT O		1
C	GM02	C76068327		81320 9	HENSLEE			2		ANIAK	TAKE MOOSE CLOSED SE		2
C	GM02	C7609229G		81310	DOBSON	10000500	0030	1	0576	ANCHORAGE	TAKE MOOSE CLOSED SE	11626	1
C	GM03	C7602166 10		840504	STEELE	03500350		1	0202	GLENNALLE	AERIAL WOLF HUNTING	6789	1
C	GM03	C7602166 20		840504	STEELE	03500350		1	0202	GLENNALLE	AERIAL WOLF HUNTING	6790	1
C	GM04	C7601169G		81020A	HARPER	00500015		1	0104	GLENNALLE	HUNTING WITHOUT A LI		1
C	GM04	C7601168		81020A	HARPER			1	0104		HUNTING WITHOUT A LI		1
C	GM04	C7616623P20		05330A	CORNWALL	00250025		1	0820	PALMER	HUNT W/O LICENSE	12414	1
C	GM04	C7616623P10		05330A	CORNWALL	00250025	SIS	1	0820	PALMER	HUNTING W/O LICENSE	12413	1
C	GM05	C7618352A		1605420	JAMES	00250025			0904	ANCHORAGE	FALSE STATEMENT ON H		1
C	GM06	C76178826		813205	HARPER	07500500		1	0906	GLENNALLE	OVERLIMIT OF BIG GAM	11672	1
C	GM06	C7616247602		81320 1	STEELE	DIS		2	0814	GLENNALLE	OVER LIMIT OF SHEEP	11670	

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
C	GM06	C76180196		81320 5	CORNWALL				0906	PALMER	OVERLIMIT OF CARIBOU	12421	
C	GM06	C76183687		81320 4	HENSLEE		0030	1	0925	ANIAK	AVER LIMIT OF BISON		1
C	GM06	C76164197		81320B11	HENSLEE			2	0811	BETHEL	OVER LIMIT OF SHEEP		2
C	GM07	C76180486		81215	HARPER	05000300	0010	1	0915	GAKONA	WANTON WASTER OF BLA	11673	1
C	GM07	C7617720A		00010A	JORDAN	04000400		1	0905	ANCHORAGE	WASTE OF FOOD ANIMAL		1
C	GM07	C7618381A10		1630010	PAUL	03000300		3	0918	ANCHORAGE	FAIL TO SALVAGE MOOS	12398	1
C	GM07	C7618045A		81215	CORNWALL	05000300	0010	1	0902	PALMER	WANTON WASTE OF BLAC		1
C	GM07	C7618381A20		1630010	PAUL	03000300		3	0922	ANCHORAGE	FAIL TO SALVAGE MOOS	12397	1
C	GM07	C7614751502		81215	MANN	0250		3	0630	PALMER	WASTE OF CARNIVORES	12257	1
C	GM07	C7617915 03		30010A	HENSLEE	05000250	00300002	2	0901	ANIAK	WASTE WILD FOOD ANIM		1
C	GM07	C7618381A30		1630010	PAUL	03000300		3	0918	ANCHORAGE	FAIL TO SALVAGE MOOS	12395	1
C	GM07	C7603022A30		1630010	TAYLOR	05000500	SIS	3	01	ANCHORAGE	WANTON WASTE-CARIBOU		1
C	GM07	C7603022A20		1630010	TAYLOR	05000500	SIS	3	01	ANCHORAGE	WANTON WASTE-CARIBOU		1
C	GM07	C7603022A10		1630010	TAYLOR	05000500	SIS	1	01	ANCHORAGE	WANTON WASTE-CARIBOU		1
C	GM08	C7618357701		81015B	HENSLEE	01000100		1	0923	ANIAK	FAIL TO VALIDATE HAR		1
C	GM08	C76183677		81015A	HENSLEE	01000100			0924	ANIAK	TAKE MOOSE W/O HARVE	12674	1
C	GM08	C7618373P02		81015B	ST AMAND			1	0919	PALMER	FAIL TO VALIDATE HAR		1
C	GM08	C76194637		81015B	DOBSON	00250025		1	0920	INNOKO RV	FAIL TO VALIDATE HAR	12366	1
C	GM09	C7618373P01		5330A	ST AMAND			1	0919	PALMER	TAKE MOOSE W/O BIG G		1
C	GM10	C7617834A		81115	JAMES	00500025		1	0905	ANCHORAGE	TRANSPORT DUCK W/O F	07157	1
C	GM10	C7617835A		81115	JAMES	00500025		1	0905	ANCHORAGE	TRANSPORT DUCK W/O F	07158	1
C	GM10	C7607772G		81310	HARPER	02500025		1	0429	GLENNALLE	TAKE WATERFOWL CLOSE		1
C	GM10	C7603909		1605920A	BRANTLEY	05000150		3	0920	ANCHORAGE	TAKE SWAN CLOSED SEA		1
C	GM11	C7619337A		813208	WELLMAN	00500050		3	0926	ANCHORAGE	FAIL TO OBTAIN PERMI	12735	1
C	GM12	C76175276		810706	STEELE	10000500		1	0901	BRANTS TE	TAKE BIG GAME SAME D	11754	1
C	GM12	C7602982		81070BB	HENSLEE	05000250			0215	ANCHORAGE	ASSIST TAKE GAME SAM		1
C	GM12	C7602966M		81070BB	HENSLEE	05000250		1	0213	ANCHORAGE	TAKE GAME SAME DAY A		1
C	GM12	C7602958M		81070BB	HENSLEE	05000250		1	0215	ANCHORAGE	TAKE GAME SAME DAY A		1
C	GM12	C7602957M		81070B6	HENSLEE	05000250		1	0213	ANCHORAGE	TAKE GAME SAMEDAY AI		1
C	GM12	C7618374A		81070	WELLMAN	04000400			0916	ANCHORAGE	TAKE MOOSE SAME DAY	12733	1
C	GM12	C76180344		81070	DOBSON	04000100		1	0912	PALMER	TAKE BEAR SAME DAY A	12364	1
C	GM13	C7609718 20		811804	HARPER	02000075		1	0521	GLENNALLE	FALSE INFO ON BEAR F		1
C	GM13	C7609718 10		81180F	HARPER	02000100		1	0521	GLENNALLE	FALSE INFO ON BEAR F		1
C	GM14	C7618357702		81160B	HENSLEE	00250025		1	0924	ANIAK	NO EVIDENCE OF SEX	12673	1
C	GM14	C7602346P30		81140B	V L STEELE	05000200	00600000	1	0131	PALMER AK	POSSESSION ILLEGAL G	8854	1
C	GM14	C7602346P20		81140B	V L STEELE	05000000	00600020	1	0131	PALMER	POSSESSION ILLEGAL G	5097	1
C	GM14	C76029074		81140B	ST AMEND				1230	PALMER	ILLEGAL TRANSPORTATI		
C	GM14	C7602346P40		81140B	VL STEELE	05000200	00600000	1	0131	PALMER	POSSESSION ILLEGAL G	5096	1
C	GM14	C7604140		81140B	HENSLEE	02500250	0015	1	0301	ANIAK	POSSESSION OF GAME I		1
C	GM14	C76211764		81140B	DOBSON	00250025		1	1119	PALMER	ILLEGAL POSSESSION O	12371	1
C	GM14	C7606186 30		81140B	HENSLEE	01000050	0030	1	0403	ANIAK	TRANS OF ILLEGALLY T		1
C	GM14	C7606186 20		81140B	HENSLEE	01000050	0030	1	0403	ANIAK	TRANSPORTATION OF IL		1
C	GM14	C7606186 10		81140B	HENSLEE	01000050	0030	1	0307	ANIAK	TRANS OF ILLEGALLY T		1
C	GM14	C7606186750		81140B	HENSLEE	00500050	0015	1	0307	ANIAK	TRANSPORT ILLEGALLY		1
C	GM14	C7606186 40		81140B	HENSLEE	00500050	0015	1	0403	ANIAK	TRANS OF ILLEGALLY T		1
C	GM14	C7601176P01		581140	ST AMAND	05000200		1	0108	PALMER	ILLEGAL POSSESSION G	8805	1
C	GM16	C7617540A		81320	WELLMAN	SIS0050		3	0831	ANCHORAGE	TAKING UNDERSIZED RA	12728	1
C	GM16	C7616247601		81320 11	STEELE	07500500		2	0814	GLENNALLE	SHEEP UNDER 3/4 CURL	11671	1
C	GM26	C76154636		84280	HARPER	SIS SIS		2	0803	GLENNALLE	FAIL TO SURRENDER BE		1
C	GM26	C7615452A		81370	CORNWALL	DIS		2	0723	ANCHORAGE	FAIL SALVAGE EMERGEN		
C	GM26	C7614751501		81060	MANN	0250		1	0630	PALMER	FAIL TO REPORT TAKIN	12256	1
C	OR01	C76115742		81290H4	CORNWALL	00500050		1	0619	ANCHORAGE	DISCHARGING FIREARMS	12681	1
C	OR51	C7621161602		1605870B	BRANTLEY	10000500		3	0901	ANCHORAGE	STRAEM POLLUTION		1

DETAC	CODE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
C	OR51	C76043406		1610010	HARPER	0250		3	0306	GLENNALLE	POLLUTION OF FISH SI		1
C	OR51	C7621161601		16100101	BRANTLEY	DIS			0901	ANCHORAGE	DAMAGE SPAWNING STRE		1
C	SG05	C7604678A		1605420A	CORNWALL	02000100	0005	3	0301	ANCHORAGE	FALSE STATEMENT FOR		1
C	SG05	C7604202A		AS160542	CORNWALL	02000200		1	0305	ANCHORAGE	FALSE STATEMENT FOR	9674	1
C	SG05	C7606731A		05420A	WELLMAN	01000025		3	0608	ANCHORAGE	FALSE STATEMENT	9311	1
C	SP01	C76075664		60040	MANN	00500025		1	0425	PALMER	SPORT FISH CLOSED AR	6919	1
C	SP01	C7618382G		51030D	CLEMONS	01000100	SIS	1	0808	PAXSON	ATTEMPT TO TAKE SALM	6780	1
C	SP01	C76120174		60040	NYGREN	00150015		1	0419	PALMER	SPORT FISH CLOSED WA		1
C	SP01	C76109584		60040	MANN	0025		1	0610	PALMER	SPT FISH IN CLOSED W	12288	1
C	SP01	C76109574		60040	MANN	00250025		1	0610	PALMER	SPORT FISH CLOSED WA	12287	1
C	SP01	C7613970A30		60030A	ROBERTSON	DP		2	0719	ANCHORAGE	TAKE SALMON CLOSED A		
C	SP01	C7615603A		60040H	PAUL	01000100		3	0806	ANCHORAGE	TAKE SALMON CLOSED W	12393	1
C	SP01	C7615601A		60040E	PAUL	01000100		1	0807	ANCHORAGE	SPORT FISH CLOSED WA	12394	1
C	SP01	C7615055A10		60040M1	PAUL	01000100		1	0731	ANCHORAGE	TAKE SALMON CLOSED W	12387	1
C	SP01	C7613970A20		60030A	ROBERTSON	01000100		2	0719	ANCHORAGE	SPORT FISH CLOSED AR		1
C	SP01	C7613970A10		60030A	ROBERTSON	01000100		2	0719	ANCHORAGE	SPORT FISH CLOSED AR		1
C	SP01	C7615055A20		60040M1	PAUL	01000100		1	0731	ANCHORAGE	TAKE SALMON IN CLOSE	12389	1
C	SP01	C7610075A		600409	TAYLOR	01000100		1	0529	ANCHORAGE	SPORT FISH CLSD WATE	11928	1
C	SP01	C7615132A		60040ML	T JORDAN	00500050		1	0628	ANCHORAGE	TAKE SALMON CLOSED A	U2702	1
C	SP01	C7615061A02		60040E	PAUL	01000100		1	0731	ANCHORAGE	SPORT FISH CLOSED WA	12384	1
C	SP01	C7609994401		60040	MANN	00250025		1	0529	PALMER	SPORT FISHING CLOSED	12285	1
C	SP01	C76099934		60040	MANN	00250025		1	0529	PALMER	SPORT FISHING CLOSED	12286	1
C	SP01	C7614822A13		60040M	TAYLOR		00100010	1	0730	ANCHORAGE	SPORT FISH CLOSED WA		1
C	SP01	C7612014402		60040	NYGREN	00150015		1	0419	PALMER	SPORT FISH CLOSED WA		1
C	SP01	C76183836		51030D	CLEMONS	01000100		1	0808	PAXSON	ATTEMPT TO TAKE SALM	6779	1
C	SP01	C7616755A		1605250	JAMES	01000050		1	0821	ANCHORAGE	TOOK SALMON/CLOSED W	07155	1
C	SP01	C76096034		60040	MANN	SIS		1	0523	PALMER	SPORT FISHING IN CLO	12283	1
C	SP01	C76149515		60040P	SCHUMACHER	DP		2	0730	PALMER	TAKE SALMON CLOSED A	12493	
C	SP01	C7614822A31		60041M1	TAYLOR		00050005	1	0730	ANCHORAGE	SPORT FISH CLOSED WA		1
C	SP01	C7614822A21		60040M1	TAYLOR		00050005	1	0730	ANCHORAGE	SPORT FISH CLOSED WA		1
C	SP01	C76094394		60040	MANN			1	0520	PALMER	SPORT FISH CLOSED WA		1
C	SP01	C76094384		60040	MANN	00250025		1	0520	PALMER AK	SPORT FISH IN CLOSED	12276	1
C	SP01	C76096024		60040	MANN			1	0523	PALMER	SPORT FISHING CLOSED		1
C	SP01	C76096014		60040	MANN			1	0523	PALMER	SPORT FISH CLOSED WA		1
C	SP01	C76095384		60040	MANN	00200020		1	0522	PALMER	SPORT FISH CLOSED WA	12278	1
C	SP01	C76095374		60040	MANN			1	0522	PALMER	SPORT FISH CLOSED WA		1
C	SP01	C76095364		60040	MANN			1	0522	PALMER	SPORT FISH CLOSED WA		1
C	SP02	C7610244P		60040A	ST AMAND	00250025		1	0522	PALMER	SPORT FISH CLOSED SE	12302	1
C	SP03	C7616619P		42200	CORNWALL	ESSA		1	0820	WILLOW CR	FAIL TO RELEASE SNAG	12412	1
C	SP03	C76129536		42200	STEELE	DP		2	0705	GLENNALLE	SNAGGING SALMON	11663	1
C	SP03	C76129526		42200	STEELE	DP		2	0705	GLENNALLE	SNAGGING SALMON		1
C	SP03	C7612951		42200	STEELE	01000025		3	0705	GLENNALLE	FAIL TO RELEASE FOUL	11662	1
C	SP03	C7614060A		42180	PAUL	01000025		1	0718	ANCHORAGE	MOLEST SPAWING SALMO	12518	1
C	SP03	C7616618P		42200	CORNWALL	YAA			0820	WILLOW CR	FAIL TO RELEASE SNAG	12411	
C	SP03	C7616594G		42200	VONCLAUSEN	01000100		1	0701	PAXSON	ATTEMPT TO SNAG	11702	1
C	SP03	C7614681501		420702	MANN	0100		3	0725	PALMER	SPORT FISH W/ILLEGAL	12300	1
C	SP03	C7616621P		42200	CORNWALL	ESSA			0820	WILLOW CR	FAIL TO RELEASE SNAG		
C	SP03	C7616620P		42200	CORNWALL	ESSA			0820	WILLOW CR	FAIL TO RELEASE SNAG	12412	1
C	SP03	C76146885		42200	DOBSON	00250025		2	0725	PALMER	SNAGGING SALMON	12358	1
C	SP03	C76130474		420701	ST AMAND				0730	PALMER	SPORT FISH W/ILLEGAL		
C	SP03	C7616324A		42200	CORNWALL	01500100		1	0817	ANCHORAGE	SNAGGING SALMON	12408	1
C	SP03	C76140136		42200	VONCLAUSEN	00150015		1	0703	PAXSON	ATTEMPTING TO SNAG S	11703	1
C	SP03	C76129546		42200	STEELE	DP		2	0705	GLENNALLE	SNAGGING SALMON	11665	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
C	SP03	C7616648P		42200	CORNWALL	YAA			0821	PALMER	FAIL TO RELEASE SNAG	12416	
C	SP03	C7617095P		42200	ROBERTSON	01500025		1	0826	WILLOW CR	SNAGGING SALMON	11545	1
C	SP03	C7616323A		42200	CORNWALL	01500100		1	0817	ANCHORAGE	SNAGGING SALMON	12409	1
C	SP03	C7616647P		42200	CORNWALL	01500025		1	0821	PALMER	SNAGGING SALMON	12417	1
C	SP03	C7614822A14		60040M3	TAYLOR		00100010	1	0730	ANCHORAGE	TREBLE HOOK IN A SIN		1
C	SP03	C7613373G		42200	HARPER	SIS		1	0711	GULKANA R	FAIL TO RELEASE SNAG	11667	1
C	SP03	C7614822A12		420702	TAYLOR		00100010	1	0730	ANCHORAGE	OVERSIZED HOOK		1
C	SP03	C7616325P		42200	CORNWALL	YAA			0817	PALMER	SNAGGING SALMON	12406	
C	SP03	C7614822A11		42200	TAYLOR		00100010	1	0730	ANCHORAGE	ATTEMPTING TO SNAG F		1
C	SP03	C7613375610		42200	STEELE	01500150	0010	1	0711	GULKANA R	FAIL TO RELEASE SNAG		1
C	SP03	C76133746		42200	STEELE	SIS		1	0711	GULKANA R	FAIL TO RELEASE FOUL	11668	1
C	SP03	C7617156P		42200	ROBERTSON	02000050		3	0827	WILLOW CR	SNAGGING SALMON	11547	1
C	SP03	C7617157P		42200	ROBERTSON	02000050		3	0827	WILLOW CK	SNAGGING SALMON	11548	1
C	SP03	C76124736		42020	STEELE	00250025		1	0627	LAKE LOUI	SPORT FISH W/2 LINES	11676	1
C	SP03	C76124345		420701	MANN	00250025		1	0626	PALMER	SPORT FISH W/ILLEGAL	12293	1
C	SP03	C7612825P02		420701	ST AMAND			1	0703	PALMER	SPORT FISH W/OVERSIZ	12303	1
C	SP03	C7617158P		42200	ROBERTSON	01500025		3	0827	WILLOW CK	ATTEMPTING TO SNAG	11546	1
C	SP03	C76153785		42200	ROBERTSON	00200020		1	0805	PALMER	FAIL TO RELEASE SNAG	11541	1
C	SP03	C76153775		42200	ROBERTSON	00250025		1	0805	PALMER	FAIL TO RELEASE SNAG	11540	1
C	SP03	C7616517A		42200	JAMES	01000100		1	0817	ANCHORAGE	SNAG SALMON	07152	1
C	SP03	C76150061A01		42180	PAUL	01000100		1	0731	ANCHORAGE	MOLEST SALMON	12386	1
C	SP03	C7615058		60040F	HARPER	ESSA		1	0801	COTTONWOO	SPORT FISH W/ILLEGAL	12497	1
C	SP03	C7616326P		42200	CORNWALL	YAA			0817	PALMER	SNAGGING SALMON		
C	SP03	C76124355		42200	MANN	00500050		1	0626	PALMER	SNAGGING FISH	12294	1
C	SP03	C7616327P		42200	CORNWALL	YAA			0817	PALMER	SNAGGING SALMON	12407	
C	SP03	C7618349A		42020	CORNWALL	00250025		1	0919	MIRROR LK	SPORT FISH W/2 LINES	12418	1
C	SP03	C76155254		42200	ROBERTSON	02000025		3	0807	MONTANA C	FAILED TO RELEASE SN	11542	1
C	SP03	C76131093		42200	CORNWALL	03000300	00100002	1	0707	ANCHORAGE	ATTEMPT SNAG FISH		1
C	SP03	C7603626A		42020	CORNWALL	03000200	0005	1	0228	ANCHORAGE	S F WITH 3 LINES	9673	1
C	SP03	C7605569A		42-030	CORNWALL	00500050		1	0329	JEWEL LK	SF W/MORE THAN 3 HOO	9703	1
C	SP04	C7606060P		1605330A	CORNWALL	00250015		3	0406	FINGER LA	S F W/O LICENSE	9705	1
C	SP04	C7605904P		1605330A	CORNWALL	00250015		1	0403	PALMER	S/F W/O LICENSE	9704	1
C	SP04	C7604282A		1605330A	JORDAN T	00250025		1	0310	EAGLE RIV	SPORT FISH NO LICENS	4432	1
C	SP04	C7607972		1605330A	KINZY	DIS		1	0430	BETHEL	FISHING WITHOUT LICE		
C	SP04	C7606253P		1605330A	ROBERTSON	00250025		3	0409	PALMER	SPORT FISH NO LICENS	4434	1
C	SP04	C7606252P		1605330A	ROBERTSON	00250025		1	0409	PALMER	SPORT FISH NO LICENS	4433	1
C	SP04	C7606298P		1605330A	CORNWALL	00500025		1	0410	PALMER	SF W/O LICENSE	9707	1
C	SP04	C7606297P		1605330A	CORNWALL	00250025		1	0410	PALMER	SF W/O LICENSE	9706	1
C	SP04	C7606296P		1605330A	CORNWALL	00250025		1	0410	PALMER	SF W/O LICENSE	9708	1
C	SP04	C7619498520		72010	DOBSON	0015		1	0621	BIRCH CRK	SPORT FISH W/O LICEN	12353	1
C	SP04	C7600510A		1605330A	TAYLOR	00100010		1	0110	ANCHORAGE	SPORT FISH W/O LICEN	7968	1
C	SP04	C7600509A		1605330A	J TAYLOR	00100010		1	0110	ANCHORAGE	SPORT FISH W/O LICEN	7966	1
C	SP04	C7601005P		1605330A	WELLMAN	00250010		3	0118	BIG LAKE	SPORT FISHING W/O LI	9305	1
C	SP04	C7600598A		1605330A	CORNWALL	00020002		1	0111	ANCHORAGE	SPORT FISH W/O LICEN	9668	1
C	SP04	C7600597A		1605330A	CORNWALL	00020002		3	0111	ANCHORAGE	S F W/O LICENSE	9667	1
C	SP04	C7600596A		1605330A	CORNWALL	00020002		1	0111	ANCHORAGE	S F W/O LICENSE	9666	1
C	SP04	C7600571A		1605330A	TAYLOR	00020002		1	0111	ANCHORAGE	SPORT FISHING W/O LI	7970	1
C	SP04	C7600526P		1605330A	TAYLOR	00250010		1	0110	ANCHORAGE	SPORT FISHING W/O A	7969	1
C	SP04	C7613115A		05330A	ROBERTSON	00500050		1	0703	ANCHORAGE	SPORT FISH W/O LICEN		1
C	SP04	C76183994		05330A	MANN	00250010		1	1002	PALMER	SPORT FISH W/O LICEN		1
C	SP04	C7613119A		1605330A	TAYLOR			2	0702	ANCHORAGE	SPORT FISHING W/O A		2
C	SP04	C76173292		05330A	DOBSON	01000025		1	0817	ANCHORAGE	SPORT FISH W/O LICEN	12361	1
C	SP04	C7614956		05330A	HARPER	0025		1	0801	COTTONWOO	SPORT FISH W/O LICEN	12500	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
C	SP04	C7615059		05330A	HARPER	0010		1	0801	COTTONWOO	FISHING W/OUT LICENS	12499	1
C	SP04	C7616437P		05330A	PRUBASCO	00250025		1	0815	PALMER	SPORT FISH W/O LICEN		1
C	SP04	C76152395		05330A	MANN	00100010		1	0731	PALMER	SPORT FISHING W/O A	12259	1
C	SP04	C76152234		05330A	DOBSON	00500025		1	0731	THEODORE	SPORT FISH W/O LICEN	12359	1
C	SP04	C7615446A		05330A	CORNWALL	00750025			0726	ANCHORAGE	SPORT FISH W/O LICEN	12692	1
C	SP04	C76152244		05330A	DOBSON	00500025		1	0731	THEODORE	SPORT FISH W/O LICEN	12360	1
C	SP04	C76116957		05330A	BINSCHUS	01000050		1	0620	BETHEL	SPORT FISHING W/O VA	1117	1
C	SP04	C76116947		1605330	HENSLEE	01000050		1	0620	HOLOKOK R	SPORT FISHING WITHOU		1
C	SP04	C7611761A		1605330A	PAUL	02500050		1	0621	ANCHORAGE	SPORT FISH W/O LICEN	12501	1
C	SP04	C76133816		05330A	HARPER	01500100		1	0708	GLENNALLE	SPORT FISH W/O LICEN		1
C	SP04	C7616077A		05420A	WELLMAN	01000100		1	0703	ANCHORAGE	FALSE STATEMENT ON L	12732	1
C	SP04	C7613667		1605330A	HARPER	00100010		1	0714	BETHEL	SPORT FISHING WITHOU	12662	1
C	SP04	C76165916		1605330A	VONCLAUSEN	01000100			0701	PAXSON	SPORT FISH W/O LICEN		1
C	SP04	C7613668		1605330A	HARPER	00100010		1	0714	BETHEL	SPORT FISHING WITHOU	12661	1
C	SP04	C7616322A		05330A	CORNWALL	00500050		1	0817	ANCHORAGE	SPORT FISH W/O LICEN	12410	1
C	SP04	C76097754		1605330	MANN	00300010		1	0523	PALMER	SPORT FISHING W/O A	12284	1
C	SP04	C7614954		05330A	SCHUMACHER	DIS DIS			0730	WILLOW CR	SPORT FISH W/O LICEN		
C	SP04	C7612825P01		1605330	ST AMAND			1		PALMER	SPORT FISH W/O LICEN	12303	1
C	SP04	C76124335		1605330A	MANN	00250025		1	0626	PALMER	SPORT FISH W/O LICEN		1
C	SP04	C7612015401		1605330A	DYGREN	00150015		1	0419	PALMER	SPORT FISH W/O LICEN		1
C	SP04	C7614822A32		05330A	TAYLOR		00050005	1	0730	ANCHORAGE	SPORT FISH W/O LICEN		1
C	SP04	C7614822A22		05330A	TAYLOR		00050005	1	0730	ANCHORAGE	SPORT FISH W/O LICEN		1
C	SP04	C7614779 5		05330A	HARPER	00100010		1	0729	WILLOW CR	SPORT FISH W/O LICEN	6852	1
C	SP04	C76213214801		1605330A				1	0708	NAPAKIAK	SPORT FISH W/O LICEN		1
C	SP04	C7614563A		053309	TAYLOR	01000050		1	0725	BIRD CREE	SPORT FISH W/O A LI	11937	1
C	SP04	C76120164		1605330A	NYGREN	00150015		1	0419	PALMER	SPORT FISH W/O LICEN		1
C	SP04	C76141455		05330A	MANN	00050005		1	0717	PALMER	SPORT FISH W/O LICEN		1
C	SP04	C7614070A		1605330A	PAUL	DIS		2	0718	ANCHORAGE	SPORT FISH W/O LICEN	12376	
C	SP04	C7614069A		1605330A	PAUL	DIS		2	0718	ANCHORAGE	SPORT FISH W/O LICEN	12377	
C	SP04	C76146845		1605330A	MANN	00100010		1	0724	PALMER	SPORT FISH W/O LICEN	12299	1
C	SP04	C7611306210		1605330A	CORNWALL	00750075		1	0607	ANCHORAGE	BORROWING ANOTHER PE	12679	1
C	SP04	C76132168		05330A	HENSLEE			1	0708	NAPAKIAK	SPORT FISHING W/O LI	12660	1
C	SP04	C76132157		05330A	HENSLEE	0010		1	0707	GEORGETOW	SPORT FISH W/O LICEN	12441	1
C	SP04	C76115054		1605330A	MANN			1	0618	PALMER	SPORT FISH W/O LICEN	12289	1
C	SP04	C76115044		1605330A	MANN			1	0618	PALMER	SPORT FISH W/O LICEN		1
C	SP05	C7611306220		1605420B	CORNWALL	00500050		1	0607	ANCHORAGE	LOANING ANOTHER PERS	12680	1
C	SP05	C76146895		05420A	DOBSON	02500100	0005	1	0724	MONTANA C	FALSE STATEMENT ON L	12253	1
C	SP05	C76131071		1605420A	CORNWALL	01500150		1	0630	ANCHORAGE	FALSE STATEMENT ON L	12689	1
C	SP05	C76194985 10		05420A	DOBSON	02500100	0005	1	0724	MONTANA C	FALSE STATEMENT ON L	12253	1
C	SP05	C7615527A		1605420A	CORNWALL	02000200		1	0512	ANCHORAGE	FALSE STATEMENT ON F	12700	1
C	SP05	C7606342A		1605420A	CORNWALL	01000100		1	0327	ANCHORAGE	FALSE STATEMENT FOR	9709	1
C	SP05	C7606978A01		1605420A	ROBERTSON	00450045		1	0416	ANCHORAGE	FALSE STATEMENT ON L	11526	1
C	SP05	C7606477A		1605420A	CORNWALL	00250025		1	0326	ANCHORAGE	FLS STATEMENT FOR RE	9710	1
C	SP05	C7606102A		1605420A	WELLMAN	00250025		1	0102	FWP ANCH	FALSE STATEMENT FOR	9310	1
C	SP05	C7609222		1605420A	BRANTLEY	03000050		3	0523	ANCHORAGE	FALSE STAT RES LIC		1
C	SP06	C7609509601		51020A	HARPER	01000025		2	0522	GLENNALLE	OVERLIMIT GREYLING		1
C	SP06	C7609219		48020	HARPER	00250025		1	0517	GLENNALLE	SPT FISH OVERLIMIT		1
C	SP06	C76211534		600201A	DOBSON	01000025		3	1106	PALMER	OVERLIMIT SALMON	12368	1
C	SP06	C76152203		600202	ROBERTSON	01000010		3	0804	EKLUTNA	OVER LIMIT SALMON	11538	1
C	SP06	C76152193		600202	ROBERTSON	01000010		3	0804	EKLUTNA	OVERLIMIT OF SALMON	11539	1
C	SP06	C76152355		60020	MANN	0050		1	0801	PALMER	OVERLIMIT OF SALMON	12262	1
C	SP06	C76152345		60020	MANN	0050		1	0730	PALMER	OVERLIMIT OF SALMON	12258	1
C	SP06	C7615242A		600202	CORNWALL	00500025		1	0731	ANCHORAGE	OVERLIMIT SALMON	12698	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
C	SP06	C7614955		60020A	HARPER	DIS		2	0731	SUNSHINE	OVERLIMIT SALMON	6853	2
C	SP06	C7613689		510202	STEELE	00150015		1	0629	GLENNALLE	OVER LIMIT KING SALM	11661	1
C	SP06	C76146835		600202	MANN	00250025		1	0725	PALMER	OVER LIMIT OF PINK S	12255	1
C	SP06	C7614681502		6010202	MANN	03000100		1	0725	PALMER	OVERLIMIT OF PINK SA	12254	1
C	SP06	C76145425		600202	SCHUMACHER	01500050		3	0724	PALMER	OVERLIMIT OF SALMON	12491	1
C	SP07	C7613666810		05831A	HENSLEE	01000100		1	0714	EMMONAK	WASTE OF SALMON	12450	1
C	SP07	C7613666820		05831A	HENSLEE	01000100		1	0714	EMMONAK	WASTE OF SALMON	12449	1
C	SP14	C76128244		60030	ST AMAND	03000150		1	0703	PALMER	ILLEGAL POSSESSION S		1
C	SP14	C7613056A		42160	TAYLOR	03000100		1	0630	ANCHORAGE	POSSESSION OF LIVE F	11934	1
C	SP16	C7614056A		60030A	PAUL	01000050		1	0717	ANCHORAGE	TAKE KING SALMON OVE		1
C	SP16	C7614055A		60030A	PAUL	03000100		3	0714	ANCHORAGE	TAKE KING SALMON OVE	12516	1
C	SP16	C76120625		60020	MANN	00300010		1	0619	PALMER	OVERSIZE KING SALMON		1
C	SP16	C7616646P		60030	CORNWALL	01500025		1	0821	PALMER	TAKING OVERSIZE KING	12415	1
C	SP16	C7611485A20		60020	TAYLOR	03000300	00100002	1	0616	DESHKA RI	POSSESS KING SALMON	11931	1
C	SP16	C7611485A10		60020	TAYLOR	03000300	00100002	1	0616	DESHKA RI	POSSESS KING SALMON	11930	1
C	SP16	C7611048A		60020	TAYLOR	00500025		1	0612	ANCHORAGE	POSSESS KING SALMON	11929	1
C	SP16	C7610074A20		60030A	TAYLOR	02500125		3	0529	DESHKA RI	TAKE OVERSIZE KING S	11926	1
C	SP16	C7610074A10		60030A	TAYLOR	02500125		3	0529	DESHKA RI	TAKE OVERSIZE KING S	11927	1
C	SP16	C76131475		60020	MANN	03000150		1	0703	PALMER	OVERSIZE KING SALMON	12296	1
C	SP16	C7611778A		60020	TAYLOR	01000025		1	0619	DESHKA RI	POSSESS KING SALMON	11933	1
C	SP16	C76124365		60020A	MANN	00500025		1	0626	PALMER	TAKE OVERSIZE KING S	12295	1
C	SP23	C76132188		0399^91	HENSLEE	0010		1	0708	ANIAK	SUBS FISH W/UNMARKED	12442	1
C	SP23	C76116878		03990F1A	KINZY	DIS		2	0616	BETHEL	SUBS FISHING/24 HR C	12478	
C	SP23	C76116898		03990G2	SCHUMACHER	00100010		1	0618	BETHEL	SUBS FISH W/UNMARKED	12479	1
C	SP23	C76112977		03805N	BINSCHUS	00250025		3	0615	BETHEL	ILLEGAL USE OF SUBS		1
C	SP23	C76112987		303990F4	SCHUMACHER	SIS			0614	BETHEL	SUBS FISH W/EXCESSIV	12477	
C	SP23	C7611685803		03990G2	BINSCHUS	00500050		1	0616	BETHEL	SUBS FISH UNMARKED G		1
C	SP23	C7611685802		03990F1A	BINSCHUS	00500050		1	0616	BETHEL	SUBS FISH CLOSED PER		1
C	SP23	C7611685801		05831A	BINSCHUS	00500050		1	0616	BETHEL	WASTE OF SUBS CAUGHT		1
C	SP23	C7611686		03990F1A	HENSLEE	DIS			0616	BETHEL	SUBS FISH CLOSED PER		
C	SP23	C76127478		3990G2	SCHUMACHER	0020		1	0627	BETHEL	SUBSISTENCE FISHING		1
C	SP23	C7613214802		3990G2	HENSLEE	01000025		3	0708	NAPAKIAK	SUBS FISH W/UNMARKED		1
C	SP23	C76119358		3990G2	BINSCHUS			1	0623	NAPAKIAK	FISHING WITH UNMARKE	1119	1
C	SP23	C76116998		03990G2	BINSCHUS	0010		1	0620	BETHEL	SUBS FISH W/UNMARKED		1
C	SP23	C76116978		03990F1A	SCHUMACHER	00500050		1	0620	BETHEL	SUBS FISH CLOSED PER		1
C	SP23	C76119388		3990G2	KINZY	01000050		1	0623	BETHEL	SUBS FISH UNMARKED N	12656	1
C	SP23	C76124808		3990F2	HENSLEE	SIS		1	0624	GOODNEWS	SUBS FISH CLOSED PER		1
C	SP23	C76116968		3990F1A	KINZY	00200020		1	0620	BETHEL	SUBS FISH CLOSED PER		1
C	SP23	C76179177		3990G2	HENSLEE	0025		1	0908	ANAIK	SUBS FISH UNMARKED G		1
C	SP23	C7613651		1605827C	SCHUMACHER	01000100		1	0628	BETHEL	PURCHASE SUBS ROE W/		1
D	CF01	D7607208X		1605920A	WALDEN	02000200		1	0726	KENAI	COMMERCIAL FISH IN C		1
D	CF01	D7606533K		6350F	MAYBERRY	DIS			0803	NAKNEK	COMM FISH CLOSED ARE		
D	CF01	D7607150X		1605920A	WALDEN	02500250		1	0726	KENAI	COMM FISHED CLOSED A		1
D	CF01	D7606434 20		06350F	WELLMAN	DIS			0629	NAKNEK	COMM FISH IN CLOSED		
D	CF01	D7607154X		1605920A	WALDEN	03500350		3	0726	KENAI	COMM FISH CLOSED ARE		1
D	CF01	D7606394 20		06350F	WELLMAN	05000500	0030	2	0703	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606583D10		39250A	BLODGETT	05000250		2	0707	DILLINGHA	CF CLOSED WATERS	6515	1
D	CF01	D7606583D20		39250A	BLODGETT	DIS		2	0707	DILLINGHA	CF CLOSED WATERS	6514	2
D	CF01	D7606583D30		39250A	BLODGETT	05000250		2	0707	DILLINGHA	CF CLOSED WATERS	6513	1
D	CF01	D7606585D		39250A	BLODGETT	10000500		3	0707	DILLINGHA	CF CLOSED WATERS	6516	1
D	CF01	D7606422 10		06350F	WELLMAN			2	0704	NAKNEK	COMM FISH IN CLOSED		2
D	CF01	D7606421 20		06350F	WELLMAN			2	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606588D		39250A	JORDON			2	0707	DILLINGHA	COMM FISH-CLOSED WAT	12055	2

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	CFO1	D7606394 10		06350E	WELLMAN	10001000	0030	2	0703	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606395K10		06350F	WELLMAN	1000		2	0706	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606391K20		06350F	WELLMAN			3	0629	NAKNEK	COMM FISH CLOSED ARE		2
D	CFO1	D7606391K10		06350F	WELLMAN			3	0629	NAKNEK	COMM FISH CLOSED ARE		2
D	CFO1	D7606422 20		06350F	WELLMAN			2	0704	NAKNEK	COMM FISH IN CLOSED		2
D	CFO1	D7606393K20		06350F	WELLMAN	10001000	0030	3	0629	NAKNEK	COMM FISH CLOSED ARE		1
D	CFO1	D7606393K10		06350F	WELLMAN	DIS		2	0629	NAKNEK	COMM FISH CLOSED ARE		
D	CFO1	D7606535K		06350F	MAYBERRY	DIS			0803	NAKNEK	COMM FISH CLOSED ARE		
D	CFO1	D7606392K10		06350F	WELLMAN	10001000	0030	1	0705	NAKNEK	COMM FISH CLOSED ARE		1
D	CFO1	D7606423 10		06350F	WELLMAN	1500		2	0704	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606392K20		06350F	WELLMAN	0500	0030	1	0705	NAKNEK	COMM FISH CLOSED ARE		1
D	CFO1	D7606540K20		6350F	MAYBERRY			2	0714	NAKNEK	COMM FISH CLOSED WAT		2
D	CFO1	D7606425K20		06350F	WELLMAN		0030	3	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606606D		06320D	BLODGETT	[illegible]		2	0713	DILLINGHA	CF CLOSED WATERS		
D	CFO1	D7606607D		39250A	BLODGETT	050[illegible]50		2	0714	DILLINGHA	CF CLOSED WATERS		1
D	CFO1	D7606608D		06350A2	BLODGETT	200[illegible]1000		1	0714	DILLINGHA	CF CLOSED WATERS		1
D	CFO1	D7606609D01		06350A2	BLODGETT	DIS DIS			0714	DILLINGHA	CF CLOSED WATERS		
D	CFO1	D7606389K20		06350F	WELLMAN	10001000		3	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606610D10		06350A2	BLODGETT	04000200		2	0714	DILLINGHA	CF CLOSED WATERS		1
D	CFO1	D7606610D20		06350AI	BLODGETT			2	0714	DILLINGHA	CF CLOSED WATERS		2
D	CFO1	D7606612D		06350A2	BLODGETT	14261426		2	0713	DILLINGHA	CF CLOSED WATERS	6530	1
D	CFO1	D7606614		06350A2		YAA			0714		COMM FISH CLOSED WAT		
D	CFO1	D7606615D		06350A2	BLODGETT	10000500		1	0715	DILLINGHA	CF CLOSED WATERS	6533	1
D	CFO1	D7606540K10		6350F	DYKEMA			2	0714	NAKNEK	COMM FISH CLOSED WAT		2
D	CFO1	D7606427 10		06350F	WELLMAN	1000		2	0704	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606386 20		06350F	WELLMAN	DIS		2	0629	NAKNEK	COMM FISH IN CLOSED		2
D	CFO1	D7606619D		06350A2	HEIER	10000500		3	0721	DILLINGHA	COMM FISH CLOSED ARE	6538	1
D	CFO1	D7606375 10		06350F	WELLMAN	2000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606534K		06350F	MAYBERRY	DIS			0803	NAKNEK	COMM FISH CLOSED ARE		2
D	CFO1	D7606387K10		06350F	MAYBERRY	10001000	0030	1	0712	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606374K10		06350F	WELLMAN			2	0705	NAKNEK	COMM FISH CLOSED ARE		2
D	CFO1	D7606389K10		06350F	WELLMAN			3	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606387K20		06350F	MAYBERRY	0500	0030	1	0712	NAKEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606520K		6350F	WELLMAN	DIS			0706	NAKNEK	COMM FISH CLOSED ARE		
D	CFO1	D7606390K10		06350F	WELLMAN	10001000		1	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606519		6350F	WELLMAN	DIS			0710	NAKNEK	COMM FISH CLOSED ARE		
D	CFO1	D7606424K10		06350F	WELLMAN	DIS		3	0704	NAKNEK	COMM FISH CLOSED WAT		2
D	CFO1	D7606423 20		06350F	WELLMAN	1500		2	0704	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606390K20		06350F	WELLMAN	DIS		3	0629	NAKNEK	COMM FISH CLOSED WAT		
D	CFO1	D7606425K10		06350F	WELLMAN		0030	3	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606424K20		63[illegible]F	WELLMAN	DIS		3	0704	NAKNEK	COMM FISH CLOSED WAT		2
D	CFO1	D7606374 20		6350F	WELLMAN	02500125		2	0705	NAKNEK	COMM FISH CLOSED ARE		1
D	CFO1	D7606385K20		6350F	WELLMAN	0500	0030	3	0703	NAKNEK	COMM FISH CLOSED WAT		1
D	CFO1	D7606385K10		06350F	WELLMAN	05000500	0030	3	0703	NAKNEK	CF CLOSED WATERS		1
D	CFO1	D7606428 10		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606573D21		39.250A	PAUL	05000250		2	0628	DILLINGHA	CF CLOSED WATERS	12508	1
D	CFO1	D7606573D10		39250A	PAUL	10000500		1	0628	DILLINGHA	CF CLOSED WATERS	12507	1
D	CFO1	D7606434 10		06350F	WELLMAN	2000		2	0629	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606386 10		06350F	WELLMAN	DIS		2	0629	NAKNEK	COMM FISH IN CLOSED		2
D	CFO1	D7606427 20		06350F	WELLMAN	1000		2	0704	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606532K		06350F	MAYBERRY	DIS		2	0803	NAKNEK	COMM FISH CLOSED ARE		2
D	CFO1	D7606429 20		06350F	WELLMAN		0030	2	0704	NAKNEK	COMM FISH IN CLOSED		1
D	CFO1	D7606429 10		6350F	WELLMAN	05000500		2	0704	NAKNEK	COMM FISH IN CLOSED		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	CF01	D7606428 20		06350E	WELLMAN	DIS		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606384K20		06350F	WELLMAN	10001000	0030	1	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606569D01		39250A	BLODGETT	20001100		1	0628	DILLINGHA	CF CLOSED WATERS	6509	1
D	CF01	D7606568D		39250A	BLODGETT			2	0625	DILLINGHA	CF CLOSED WATERS		2
D	CF01	D7606200R		24350C20	JONES	15000500		1	0728	CORDOVA	COMM FISH CLOSED WAT		1
D	CF01	D7606567D		39250A	BLODGETT			2	0622	DILLINGHA	CF CLOSED WATERS		2
D	CF01	D7606431 02		063200	WELLMAN	05000500	0030	2	0703	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606432K		06350F	MAYBERRY	1000		3	0704	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606565D20		39250A	BLODGETT	0050		2	0622	DILLINGHA	COMM FISH CLOSED WAT		1
D	CF01	D7606430 20		06350F	WELLMAN	DIS		2	0703	NAKNEK	COMM FISH CLOSED WAT		
D	CF01	D7606430 10		06350F	WELLMAN	1000		2	0703	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606384K10		06350F	WELLMAN	10001000	0030	1	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606379 20		06350F	WELLMAN	DIS		2	0629	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606379 10		06350F	WELLMAN	05000500		2	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606285V		24330A	SHORT	05000500		1	0623	VALDEZ	COMM FISH CLOSED ARE		1
D	CF01	D7606284V		24330A	SHORT	05000500		1	0618	VALDEZ	COMM FISH CLOSED ARE	7912	1
D	CF01	D7606565D10		39250A	BLODGETT	02000100		2	0622	DILLINGHA	COMM FISH CLOSED WAT	6506	1
D	CF01	D7606420K10		06350F	WELLMAN	DIS			0705	NAKNEK	COMM FISH CLOSED WAT		
D	CF01	D7606419K20		06350F	WELLMAN		0030	3	0703	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606564D		39250A	ROBERTSON	05000250		3	0622	DILLINGHA	COMM FISH CLOSED WAT	11533	1
D	CF01	D7606421 10		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606447K01		06350F	MAYBERRY	02500100	00300000	2	0715	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606443		06350F	WELLMAN	1000		2	0706	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606420K20		06350F	WELLMAN	DIS			0705	NAKNEK	COMM FISH CLOSED WAT		
D	CF01	D7606396K20		06350F	WELLMAN	05000500	0030	1	0710	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606396K10		06350F	WELLMAN	10001000	0030	1	0710	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606395K20		06350F	WELLMAN	DIS		1	0706	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606563D		39250A	ROBERTSON	05000250		2	0622	DILLINGHA	COMM FISH CLOSED WAT	11536	1
D	CF01	D7606560D20		39250A	ROBERTSON	DIS			0618	DILLINGHA	COMM FISH CLOSED WAT	11532	
D	CF01	D7606414 10		06350F	WELLMAN	10001000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606403K20		06350F	WELLMAN	10001000		3	0629	NAKNEK	CF CLOSED WATGERS		1
D	CF01	D7606560D10		39250A	ROBERTSON	10000500		3	0618	DILLINGHA	CF CLOSED WATERS	11531	1
D	CF01	D7606415 11		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606414 20		06350F	WELLMAN	0500		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606435K10		06350F	WELLMAN	DIS			0705	NAKNEK	COMM FISH CLOSED ARE		
D	CF01	D7606403K10		06350F	WELLMAN	DIS			0629	NAKNEK	CF CLOSED WATERS		2
D	CF01	D7606286V		24330A	SHORT	05000500		2	0623	VALDEZ	COMM FISH CLOSED ARE		1
D	CF01	D7606562D		39250A	JORDAN	05000250		1	0622	DILLINGHA	COMM FISH CLOSED WAT	11535	1
D	CF01	D7606416 10		06350F	WELLMAN	2000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606400K20		06350F	WELLMAN		0030	3	0704	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606400K10		06350F	WELLMAN		0030	3	0704	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606415 13		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606401K20		06350F	WELLMAN	05000000	00300000	2	0705	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606401K10		06350F	WELLMAN	10001000	0030	3	0705	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606513K		06320E	MAYBERRY	DIS			0710	NAKNEK	COMM FISH CLOSED WAT		
D	CF01	D7606417K10		06350F	WELLMAN	DIS			0705	NAKNEK	COMM FISH CLOSED WAT		
D	CF01	D7606416 20		06350F	WELLMAN	0500		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606399K20		/6350F	WELLMAN	10001000		1	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606449K		06350F	WELLMAN	1000		2	0710	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606447K20		06350F	MAYBERRY	05000250	00300000	2	0715	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606419K10		06350F	WELLMAN		0030	3	0703	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606417K20		06350F	WELLMAN	DIS			0705	NAKNEK	COMM FISH CLOSED WAT		
D	CF01	D7606399K10		06350F	WELLMAN	0500	0030	1	0705	NAKNEK	COMM FISH CLOSED WAT		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	CF01	D7606398K20		6320E	WELLMAN	05000500	0030	3	0710	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606398K10		06320E	WELLMAN	05000500	0030	3	0710	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606442		06320E	WELLMAN	1000		2	0710	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606409 20		06320E	WELLMAN	1000		2	0703	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606441		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISHING CLOSED		1
D	CF01	D7606406 20		06350F	WELLMAN	1000	0030	2	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606437K		06350F	WELLMAN	10001000	0030	3	0706	NAKNEK	CF CLOSED WATERS		1
D	CF01	D7606436K		06350F	WELLMAN	10001000		3	0629	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606435K20		06350F	WELLMAN	05000500	0030	3	0705	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606409 10		06320E	WELLMAN	1000		2	0703	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606408 20		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606408 10		06350F	WELLMAN	2000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606407 20		06350F	WELLMAN		0030	2	0629	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606407 10		06350F	WELLMAN	10001000		2	0629	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606438		06350F	WELLMAN	10001000		2	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606186R		24350A	JONES			2	0531	CORDOVA	COMM FISH CLOSED WAT		2
D	CF01	D7606185R		24350A	JONES	05000250		2	0531	CORDOVA	COMM FISH CLOSED WAT		1
D	CF01	D7606406 10		06350F	WELLMAN	1000	0030	2	0629	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606405 20		06350F	WELLMAN				0710	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606405 10		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606404 20		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606404 10		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606413K20		06350FMA	YBERRY	0500		3	0714	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606413K10		06350F	MAYBERRY	1000		3	0714	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606412 20		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH IN CLOSED		2
D	CF01	D7606412 10		06350F	WELLMAN	1000		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606411K20		06350F	MAYBERRY	0500		1	0714	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606411K10		06350F	MAYBERRY	1000		1	0714	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606410 20		/6350F	WELLMAN	05000500		2	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606410 10		06350F	WELLMAN	05000500		2	0705	NAKNEK	COMM FISH CLOSED WAT		1
D	CF01	D7606440K		06320E	WELLMAN	05000500	0030	3	0710	NAKNEK	COMM FISH CLOSED ARE		1
D	CF01	D7606377 20		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH IN CLOSED		2
D	CF01	D7606439K		06350F	WELLMAN	05000500	0030	3	0705	NAKNEK	CF CLOSED WATERS		1
D	CF01	D7606376 10		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH CLOSED WAT		2
D	CF01	D7606375 20		06350F	WELLMAN	0500		2	0705	NAKNEK	COMM FISH IN CLOSED		1
D	CF01	D7606377 10		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH IN CLOSED		2
D	CF01	D7606376 20		06350F	WELLMAN			2	0710	NAKNEK	COMM FISH CLOSED WAT		2
D	CF02	D7607194X		21320B1	WALDEN	DIS		2	0716	KENAI	COMMERCIAL FISH CLOS		
D	CF02	D7606378K01		06320E	WELLMAN	05000500		1	0630	NAKNEK	CF CLOSED PERIOD		1
D	CF02	D7607151X11		1605920A	WALDEN			2	0730	KENAI	C/F CLOSED PERIOD		2
D	CF02	D7606402K10		06320E	WELLMAN	0500		1	0629	NAKNEK	CF CLOSED PERIOD		1
D	CF02	D7607151X21		1605920A	WALDEN			2	0730	KENAI	C/F CLOSED PERIOD		2
D	CF02	D7606402K20		06320E	WELLMAN	0500		1	0629	NAKNEK	CF CLOSED PERIOD		1
D	CF02	D7606288V		24332B	EAMES	02000100		1	0717	VALDEZ	FAIL TO REMOVE LEAD		1
D	CF02	D7606378K10		06320E	WELLMAN	05000500		1	0629	NAKNEK	CF CLOSED PERIOD		1
D	CF02	D7606022H		213202	THORSUD	02200220		2	0716	HOMER	FISHING DURING CLOSE		1
D	CF02	D7606023X		21320 2	CARPENTER G	02500250					FISHING DURING CLOSE		1
D	CF02	D7606422D		06320C	HEIER	02000200	00000000	1	0724	DILLINGHA	C/F CLOSED PERIOD	6540	1
D	CF02	D7606605D		06320D	BLODGETT	DP		2	0713	DILLINGHA	CF CLOSED PERIOD		
D	CF02	D7606575D		06320D	PAUL			2	0702	DILLINGHA	COMM FISH CLOSED PER	12511	2
D	CF02	D7606604D		06320D	BLODGETT	DP		2	0713	DILLINGHA	CF CLOSED PERIOD		
D	CF02	D7606600D01		06320B	BLODGETT	0500		1	0709	DILLINGHA	COMM FISH DURING CLO	6523	1
D	CF02	D7606599D01		06320B	BLODGETT	20002000		1	0709	DILLINGHA	CF CLOSED PERIOD	6522	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	CF02	D7606598D		06320B	BLODGETT	10000500		1	0709	DILLINGHA	COMM FISH DURING CLO	6521	1
D	CF02	D7606597D		06320B	BLODGETT	02000100		1	0709	DILLINGHA	COMM FISH - CLOSED P	6520	1
D	CF02	D7606596D		06320B	BLODGETT	05000250		1	0709	DILLINGHA	COMM FISH - CLOSED P	6519	1
D	CF02	D7606587D		06320D	BLODGETT	02000200		3	0707	DILLINGHA	CF CLOSED PERIOD	6518	1
D	CF02	D7606580D20		06320B	JORDON	02000200		1	0705	DILLINGHA	COMM FISH CLOSED PER	12501	1
D	CF02	D7606580D10		06320B	JORDON	02000200		1	0705	DILLINGHA	COMM FISH CLOSED PER	12052	1
D	CF11	D7606426K01		05100A	WELLMAN	07180718		3	0704	NAKNEK	COMM FISH W/O ENTRY		1
D	CF11	D7606433K01		2005100A	WELLMAN			3	0701	NAKNEK	C F W/O LIMITED ENT*		1
D	CF11	D7606433K11		5100A	WELLMAN	2000		1	0701	NAKNEK	COMM FISH W/O ENTRY		1
D	CF11	D7606017H02		1643140	CARPENTER	DIS		2	0719	HOMER	NO INTERIM USE PERMI		2
D	CF11	D7606397K		1643140A	WELLMAN	08750500	0030	1	0617	NAKNEK	COMM FISH W/O ENTRY		1
D	CF11	D7606190R		43140	ROSCOVIOUS	25001500		2	0517	CORDOVA	COMM FISH W/O L E PE		1
D	CF11	D7606103M		1643140A	JORDAN	03000300		1	0319	SEWARD	COMM FISH - NO LIMIT		1
D	CF20	D7606206R		1605560E	AMES	01000050		1	0720	CORDOVA	C/F W/O LONG LINE LI		1
D	CF20	D7606189R		1605570	JONES	00500050		1	0517	CORDOVA	COMM FISH W/O GEAR L		1
D	CF20	D7606007H02		1605610	HALL	02000100		1	0207	HOMER	TRAWL W/O LICENSE		1
D	CF20	D7606010H		1605630	HALL	02000200		3	0115	HOMER	COM FISH W/O GEAR LI		1
D	CF20	D7606183R02		1605490	JONES	00500050		1	0518	CORDOVA	NO DRIFT GILL NET LI		1
D	CF20	D7606201R01		05570	JONES	01000100		1	0727	CORDOVA	COMM FISH W/O GEAR L		1
D	CF20	D7606433K02		1605570	WELLMAN	DIS		3	0701	NAKNEK	COMM FISH W/O DRIFT		
D	CF20	D7606433K13		160557	WELLMAN	0100		1	0701	NAKNEK	COMM FISH W/O GEAR L		1
D	CF20	D7606382K		06331G	WELLMAN	11671167		3	0704	NAKNEK	ILLEGAL OPERATION OF		1
D	CF20	D7606017H01		1605560	CARPENTER	DIS		2	0719	HOMER	NO LONGLINE LICENSE		2
D	CF20	D7606426K02		1605570	WELLMAN			3	0704	NAKNEK	COMM FISH W/O GERA R		1
D	CF20	D7606578D02		1605670G	PAUL	00100010		1	0703	DILLINGHA	COMM FISH W/O GEAR L	12514	1
D	CF20	D7606599D02		1605670G	BLODGETT	00150015		1	0709	DILLINGHA	COMM FISH W/O GEAR L		1
D	CF21	D7607225X		1605510	CARPENTER	05000300		1	0704	HOMER	NO VESSEL LICENSE		1
D	CF21	D7606011H		1605490A	HALL	02000200		3	0115	HOMER	COM FISH W/O VESSEL		1
D	CF21	D7606202R02		05490A	JONES	02500250		1	0620	CORDOVA	COMM FISH W/O VESSEL		1
D	CF21	D7606201R02		05490	JONES	01000100		1	0727	CORDOVA	COMM FISH W/O VESSEL		1
D	CF21	D7606183R01		1605490J	ONES	00500050		1	0518	CORDOVA	COMM FISH W/O VESSEL	8119	1
D	CF21	D7606198R		1605490	JONES	00500050		1	0629	CORDOVA	COMM FISH W/O VESSEL		1
D	CF21	D7606017H03		1605510	CARPENTER	DIS		2	0719	HOMER	NO VESSEL LICENSE		
D	CF21	D7606007H01		1605490A	HALL	02000100		1	0207	HOMER	COM FISH W/O VESSEL		1
D	CF22	D7607151X12		16-05480	WALDEN			2	0730	KENAI	NO C/F LICENSE		2
D	CF22	D7606559D		1605480A	ROBERTSON	00150015		3	0618	DILLINGHA	COMM FISH W/O LICENS		1
D	CF22	D7606558D		1605480A	ROBERTSON	00150015		1	0618	DILLINGHA	COMM FISH W/O LICENS		1
D	CF22	D7606418K		1605480A	WELLMAN	00500050	0030	1	0701	NAKNEK	CF W/O LICENSE		1
D	CF22	D7606184R		1605480	JONES	01500150		1	0521	CORDOVA	COMM FISH W/O LICENS	8120	1
D	CF22	D7606009H		1605480	HALL	05000300		3	0115	HOMER	COMM FISH W/O LICENS		1
D	CF22	D7606906		39110A	ROSCOVIUS	01000050		1	0421	CORDOVA	NO COMM FISHING LIC		1
D	CF22	D7606182R		1605480A	ROSCOVIUS	20000500		2	0422	CORDOVA	TAKE KELP W/O LICENS		1
D	CF22	D7606202R01		05480A	JONES	02500250		1	0620	CORDOVA	COMM FISH W/O LICENS		1
D	CF22	D7606007H03		1605480A	HALL	02000100		1	0207	HOMER	COM FISH W/O LICENSE		1
D	CF22	D7606571D		1605480A	PAUL	DIS			0628	DILLINGHA	COMM FISH W/O LICENS	12504	2
D	CF22	D7606570D		1605480A	PAUL	DIS			0628	DILLINGHA	COMM FISH W/O A LICE	12505	
D	CF22	D7606557D		1605480A	ROBERTSON	00150015		1	0618	DILLINGHA	COMM FISH W/O LICENS	11527	1
D	CF22	D7606573D22		1605480A	PAUL	01000100		2	0628	DILLINGHA	CF W/O LICENSE	12509	1
D	CF22	D7606433K12		1605480A	WELLMAN	0100		1	0701	NAKNEK	COMM FISH W/O LICENS		1
D	CF22	D7606577D		1605480A	PAUL	00100010		1	0703	DILLINGHA	COMM FISH W/O LICENS	12515	1
D	CF22	D7606600D02		1605480A	BLODGETT	00150015		1	0709	DILLINGHA	COMM FISH W/O LICENS		1
D	CF22	D7606599D03		1605480A	BLODGETT	00150015		1	0709	DILLINGHA	COMM FISH W/O LICENS		1
D	CF22	D7606578D01		1605480A	PAUL	00100010		1	0703	DILLINGHA	COMM FISH W/O LICENS	12514	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	CF22	D7606017H04		1605480	CARPENTER	DIS		2	0719	HOMER	NO COMM FISH LICENSE		2
D	CF22	D7606586D		1605480A	BLODGETT	00150015		3	0707	DILLINGHA	COMM FISH W/O LICENS	6517	1
D	CF22	D76066l6D		1605480A	BLODGETT	00150015		1	0715	DILLINGHA	COMM FISH W/O A LICE	6532	1
D	CF22	D7606609D02		1605480A	BLODGETT	00150015		1	0714	DILLINGHA	COMM FISH W/O LICENS		1
D	CF22	D76066l8D		1605480A	HEIER	00150015		1	0721	DILLINGHA	COMM FISH W/O LICENS	6537	1
D	CF22	D76066l7D		1605480A	BLODGETT	00150015		1	0716	DILLINGHA	COMM FISH W/O LICENS	6534	1
D	CF25	D7607023X		21335	WALDEN	01000100		3	0630	KENAI	MINIMUN DISTANCE BET		1
D	CF25	D76066l6D		39105D3	BLODGETT	05000089		2	0803	DILLINGHA	ANCHORING DRIFT GILL	0299	1
D	CF25	D7607024X		21335	WALDEN	DIS DIS		3	0630	KENAI	MINIMUM DISTANCE BET		2
D	CF25	D7606599D04		06331L	BLODGETT	0400		3	0709	DILLINGHA	CF 2 TYPES OF GEAR A		1
D	CF25	D7607185X		21331D	WALDEN	00500050		2	0802	KENAI	EXCEEDING MAXIMUM 10		1
D	CF25	D7606600D03		06331L	BLODGETT	0100		1	0709	DILLINGHA	CFCF 2 TYPES OF GEAR		1
D	CF25	D7606628D01		39105D3	NEKETA	10000500		3	0820	DILLINGHA	ANCHORING DRIFT GILL	6544	1
D	CF25	D7606196R		39105D3	JONES	02500250		2	0707	CORDOVA	C/F ANCHORED GILL NE	4066	1
D	CF31	D76066l1D		1605678E	HEIER	DP		2	0723	DILLINGHA	C F W/O GEAR LICENSE	6539	
D	CF31	D76066l0D		1605670E	BLODGETT	DP		2	0722	DILLINGHA	CF W/O GEAR LICENSEE	0298	
D	CF31	D7606383K		06331G	WELLMAN	11671167		3	0704	NAKNEK	ILLEGAL OPERATION OF		1
D	CF32	D7606524 01		5920A	MAYBERRY	02500250		3	0703	NAKNEK	CERTAIN ACTS UNLAWFU		1
D	CF42	D7606104M		35020C	JORDAN	03000100		2	0313	SEWARD	COMM FISH IN UNREG A		1
D	CF61	D7607151X23		21334A	WALDEN			2	0730	KENAI	UNMARKED C/F GEAR		2
D	CF61	D7606027H		34050B	THORSRUD	01000100		3	0904	HOMER	KING CRAB POTS W/O M		1
D	CF61	D7607151X22		21336	WALDEN			2	0730	KENAI	UNMARKED VESSEL		2
D	CF61	D7606524 02		5920A	MAYBERRY	02500250		3	0703	NAKNEK	REPORTS REQUIRED BY		1
D	CF61	D7607220X01		21334	WALDEN	00500050		1	0705	KENAI	UNMARKED GEAR		1
D	CF61	D7606431 01		09343	WELLMAN	DIS		2	0703	NAKNEK	OBSCURED REGULATION		
D	CF61	D7607220X02		21336	WALDEN	00500050		1	0705	KENAI	UNMARKED VESSEL		1
D	CF61	D7606569D02		06342	BLODGETT	00150015		1	0628	DILLINGHA	CF WITH IMPROPER ADF	6510	1
D	CF61	D7606935X		39380B	THOMPSON	00250025		1	0602	KENAI	UNMARKED BUOY		1
D	CF61	D7606381K		39890H	WELLMAN	0200	0030	1	0629	NAKNEK	UNMARKED NET GEAR		1
D	CF61	D7606574D01		1605520A	PAUL	00250025		1	0702	DILLINGHA	COMM FISH W/O ADF&G	12512	1
D	CF61	D7606199R		32050B	JONES	10000500		1	0728	CORDOVA	COMM FISH UNMARKED G		1
D	CF61	D7606574D02		06342	PAUL	00150015		1	0702	DILLINGHA	OBSCURED ADF&G NO	12513	1
D	CF61	D7606628D02		1605520A	NEKETA	00250025		3	0820	DILLINGHA	COMM FISH W/O ADF&G	6544	1
D	CF61	D7606053R		35050	HALL	DIS		2	0223	HOMER	IMPROPER GEAR INDENT		
D	CF61	D7606058H		34050B	CARPENTER	01000100			0904	HOMER	KING CRAB POTS W/O P		1
D	CF61	D7606599D05		06342	BLODGETT	00250025		1	0709	DILLINGHA	FAILURE TO DISPLAY C		1
D	CF61	D7606054R		535050B	ROSCOVIUS	05000250		1	0416	CORDOVA	IMPROPER IDENT TANNE		1
D	CF61	D7606415 12		09343	WELLMAN			2	0705	NAKNEK	OBSCURED REGULATION		1
D	CF61	D7606378K02		06334A	WELLMAN	01000100		1	0630	NAKNEK	UNMARKED BOUY		1
D	GM01	D7607209X		81320 8		ESSA			0820		TAKE GOAT CLOSED ARE		
D	GM01	D7607235X		81250B8	WALDEN	DIS		2	0904	KENAI	TAKE BLK BEAR CLOSED		
D	GM02	D7606924X		813202	JORDAN	00500050		3	0523	KENAI	TAKE BROWN BEAR CUB		1
D	GM02	D7607244X30		81320	PAINTER	1000	00600060	2	0930	KENAI	TAKE MOOSE CLOSED SE		1
D	GM02	D7606861X		813209	JORDAN J	05000500		2	0314	KENAI	TAKE MOOSE CLOSED SE		1
D	GM02	D7607244X40		81320 9	PAINTER	DIS DIS		2	0930	KENAI	TAKE MOOSE CLOSED SE		2
D	GM02	D7606289V		81320 1	EAMES	10000750	0010	1	0710	VALDEX	TAKING BLACK BEAR CL		1
D	GM02	D7607253X		813403	CORNWALL	00600030			0807	ANCHORAGE	TAKE PTARMIGAN OUT O		1
D	GM02	D7606851X40		81320 9	THOMPSON	05000200	00450012	2	0227	KENAI	ILLEGAL MOOSE		1
D	GM02	D7606851X30		813209	THOMPSON	05000200	00450012	2	0229	KENAI	ILLEGAL MOOSE		1
D	GM02	D7606851X20		813209	THOMPSON	05000200	00450012	2	0227	KENAI	ILLEGAL MOOSE		1
D	GM02	D7606851X10		81320 9	THOMPSON	05000200	00450012	2	0227	KENAI	ILLEGAL MOOSE		1
D	GM02	D7606537K		81310	MAYBERRY	01000100	0030	3	0805	NAKNEK	TAKE CARIBOU CLOSED		1
D	GM02	D7606100M		813209	SEIBEL P		00450045	1	0124	SEWARD	TAKING MOOSE CLOSED		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	GM02	D7606029H		81310	CARPENTER		0020	3	0115	HOMER	ILLEGAL MOOSE		1
D	GM02	D7606840X01		1605920A	FRANCE	DIS	DIS	2	0201	KENAI	TAKE MOOSE CLOSED SE		
D	GM02	D7606839X01		1605920A	FRANCE	DIS	DIS	2	0201	KENAI	TAKE MOOSE CLOSED SE		
D	GM02	D7606836X01		813209	THOMPSON		00450045	1	0201	KENAI	TAKE MOOSE CLOSED SE		1
D	GM02	D7606830X		813209	KITCHEN		00600045	2	0120	KENAI	TAKING MOOSE CLOSED		1
D	GM02	D7606827X01		813209	THOMPSON		00600060	3	0318	KENAI	TAKE MOOSE CLOSED SE		
D	GM02	D7606834X01		81320 9	FRANCE			2	0201	KENAI	TAKE MOOSE CLOSED SE		2
D	GM02	D7606207R		8132026	JONES	05000350	0015	1	1005	CORDOVA	TAKE BEAR CLOSED SEA		1
D	GM02	D7606102M		813209	SEIBEL P		00450045	1	0215	SEWARD	TAKING MOOSE CLOSED		
D	GM02	D7606909X		813403	KITCHEN	01500150		1	0515	KENAI	TAKE PTARMIGAN-CLOSE		1
D	GM02	D7606908X		813403	KIRCHEN	01000100		1	0515	KENAI	TAKE PTARMIGAN-CLOSE		1
D	GM02	D7606910X		81340 3	KITCHEN	DIS DIS		2	0515	KENAI	TAKE PTARMIGAN CLOSE		
D	GM02	D7606003H		1605920A	ROBERTSON	03000300	00450015	1	0122	HOMER	TAKE MOOSE CLOSED SE		1
D	GM02	D7606001H01		1605920A	ROBERTSON	03000030	00450015	1	0122	HOMER	TAKING MOOSE NO OPEN		1
D	GM02	D7606025X01		81320	CARPENTER		00200000	1	0911	HOMER	TAKE COW MOOSE CLOSE		1
D	GM02	D7600610M		813209	P SEIBEL		00450045	1	0215	SEWARD	TAKING MOOSE CLOSED		
D	GM03	D7606175R		1155065	ROSCOVIUS	00250025		1	0119	CORDOVA	SHOOTING FROM HIGHWA		1
D	GM04	D7606028H01		1605330A	CARPENTER	01000100		3	0917	HOMER	NO HUNTING LICENSE		1
D	GM04	D7606179R		1605330A	MILLER			2	0504	CORDOVA	HUNTING W/O LICENSE		2
D	GM04	D7606177R		1605330	ROSCOVIUS	01000050		1	0218	CORDOVA	HUNTING NO LIC		1
D	GM04	D7606551D		1605330A	BLODGETT	0025		1	0304	DILLINGHA	HUNTING W/O LIC	6529	1
D	GM04	D7606753I		1605330A	DOBSON	0100		1	0106	ANCHORAGE	HUNT W/O LICENSE	9670	1
D	GM05	D7607251X02		1605420A	WALDEN	00500050			0904	KENAI	FALSE STATEMENT ON H		1
D	GM05	D7606550D02		1605420A					0904		FALSE STATEMENT ON H		
D	GM05	D7607259X02		1605420A	WALDEN		0005	1	0524	KENAI	FALSE STATEMENT ON H		1
D	GM05	D7606825X		1605420A	JORDAN J	00500050		1	1004	KENAI	FALSE STATEMENT ON L		1
D	GM05	D7607243X		1605420	PAINTER	01000100		1	0903	KENAI	FALSE STATEMENT ON L		1
D	GM05	D7606205R		05420A	JONES	05000200		1	0823	CORDOVA	FALSE STATEMENT ON L		1
D	GM05	D7607302K02		05420A	MAYBERRY	01000100	0030	3	0426	NAKNEK	FALSE STATEMENT ON L		1
D	GM07	D7606827X02		1630010A	THOMPSON		00900030	3	0318	KENAI	WASTE WILD FOOD ANIM		
D	GM07	D7607303K		300108	DYKEMA	05000300	0060	3	0914	NAKNEK	WASTE WILD FOOD ANIM		1
D	GM07	D7606757X		1630010A	JORDON	05000500	00020002	2	0328	KENAI	WASTE OF WILD FOOD A		1
D	GM07	D7606756X		1630010A	JORDAN		00100010	3	0328	KENAI	WASTE WILD FOOD ANIM		
D	GM07	D7606758X		1630010A	JORDAN		00100010	3	0328	KENAI	WASTE WILD FOOD ANIM		1
D	GM07	D7606836X02		1630010A	THOMPSON	DIS		2	0201	KENAI	WASTE WILD FOOD ANIM		
D	GM07	D7606839X02		1630010A	FRANCE	DIS	DIS	2	0201	KENAI	FAIL TO SALVAGE MOOS		
D	GM07	D7606834X02		1630010A	FRANCE	DIS DIS	DIS DIS	2	0201	KENAI	FAIL TO SALVAGE MOOS		2
D	GM07	D7606841I02		1630010	FRANCE		00100010	2	0207	KENAI	FAIL TO SALVAGE		1
D	GM07	D7606841 01		1630010	FRANCE		00100010	1	0207	KENAI	FAIL TO SALVAGE		1
D	GM07	D7606840X02		1630010A	FRANCE	DIS	DIS	2	0201	KENAI	FAIL TO SALVAGE MOOS		
D	GM08	D7606752I		81015A	RODGERS	05000100	0030	1	1231	NAKNEK	TAKE MOOSE W/O HARVE	6010	1
D	GM09	D7607309		05340A9	MAYBERRY	00500050		3	0921	NAKNEK	FAIL TO TAG MOOSE		1
D	GM09	D7606024X		81020A	CARPENTER	02500250		1	0911	HOMER	NO MOOSE TAG		1
D	GM09	D7607222X		16053409	PAINTER	00500050		1	0902	KENAI	FAIL TO AFFIX APP TA		1
D	GM09	D7606025X02		81020A	CARPENTER	02500250		1	0911	HOMER	TAKE MOOSE/NO TAGS		1
D	GM10	D7607229X03		81115 3		ESSA			0911		TAKING WATERFOWL FRO		
D	GM10	D7606281V		1605920A	EAMES	03000150	0003	3	0518	VALDEZ	TAKE WATERFOWL CLOSE		1
D	GM10	D7607229X02		81115 2		ESSA			0911		TAKE WATERFOWL W/UNP		
D	GM10	D7607229X01		81115 1		ESSA			0911		SHOOT WATERFOWL W/RI		
D	GM10	D7607310K03		81115 7	DYKEMA	00500050		1	1017	NAKNEK	HUNT WATERFOWL W/O D		1
D	GM10	D7607310K02		81115 3	DYKEMA	00500050		1	1017	NAKNEK	TAKE WATERFOWL FROM		1
D	GM10	D7607310K01		81115 2	DYKEMA	00500050		1	1017	NAKNEK	HUNT WATERFOWL W/UNP		1
D	GM10	D7607310K10		81115 3	DYKEMA	00500050		2	1017	NAKNEK	TAKE WATERFOWL FROM		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	GM12	D7606751I		81070B6	RODGERS	05000100	0030	1	1231	NAKNEK	ASSIST/TAKE MOOSE S	6009	1
D	GM12	D7606750I		81070B6	RODGERS	05000100	0030	1	1231	NAKNEK	ASSIST/TAKE MOOSE S	6008	1
D	GM13	D7607305K02		81176B	DYKEMA	05000200	0030	3	0913	NAKNEK	SEALING ANTLERS SU-R		1
D	GM13	D7606028H02		81180B	CARPENTER	00250025		3	1110	HOMER	FAIL TO SEAL HIDE &		1
D	GM14	D7607305K01		81160B	DYKEMA	05000200	0030	3	0913	NAKNEK	EVIDENCE OF SEC		1
D	GM14	D7606000H		81140B	ROBERTSON	05000300	00300020	2	0123	HOMER	POSS ILLEGALLY TAKEN		1
D	GM14	D7607244X20		81140B	PAINTER	05000250	00300020	1	0930	KENAI	POSSESSION OF 2 ILLE		1
D	GM14	D7606634D		81140AB	BLODGETT	05000500	00100000	1	1012	DILLINGHA	ILLEGAL POSSESSION O		1
D	GM14	D7607244X10		81140B	PAINTER	05000250	00300020	1	0930	KENAI	POSSESSION OF ILLEGA		1
D	GM14	D7606826X		81140B	PAINTER	01500150		1	0921	KENAI	TRANSPORTATION OF IL		1
D	GM14	D7607249X		81140B	PAINTER	02000150	00300020	1	0209	KENAI	POSSESS ILLEGALLY TA		1
D	GM14	D7606837X		81140B	THOMPSON		00200020	1	0209	KENAI	POSS OF ILLEGALLY TA		1
D	GM14	D7606838X		81140B	THOMPSON		00200020	1	0207	KENAI	ILLEGAL POSS OF GAME		1
D	GM14	D7606831X		81140B	PAINTER			2	0120	KENAI	ILLEGAL POSSESSION M		2
D	GM14	D7606845X		81140B	THOMPSON	06000400			0215	KENAI	ILL POSSESSION/MOOSE		1
D	GM14	D7606866X01		81140B	JORDAN J	DIS DIS		2	0401	KENAI	POSSESS ILLEGAL MOOS		2
D	GM16	D7607304K		81320	DYKEMA	05000300	0030	3	0912	NAKNEK	ANTLERS UNDER 50"		1
D	GM24	D7606866X02		81210	JORDAN J	DIS DIS		2	0401	KENAI	USE OF GAME AS DOG F		2
D	GM24	D7606051R		1605920A	HALL	0250 SIS		2	0221	HOMER	CERTAIN ACTS MADE UN		1
D	OR51	D7606117		1605870B	TAYLOR	10000500	00000000	3	1007	SEWARD	EXCAVATE IN RIVER W/		1
D	OR60	D7607317K		20235030	MAYBERRY	03500000	00300000	1	1023	NAKNEK	AIRMANS LIC REQUIRED		1
D	SG05	D7606121S		1605420A	TAYLOR	00500050		1	0403	SEWARD	FALSE STATEMENT ON L		1
D	SG05	D7607165X02		1605420A	WALDEN	01000100		2	0421	KENAI	FALSE STATEMENT ON L		1
D	SG05	D7606176R		1605420A	ROSCOVIUS	00250025		1	0817	CORDOVA	FALSE STATEMENT ON L		1
D	SG05	D7606855X		1605420A	THOMPSON	00500050		1	0209	KENAI	FALSE STATEMENT ON L		1
D	SG05	D7606846X		1605420A	JORDAN	00500050		1	0803	SOLDOTNA	FALSE STATEMENT ON L		1
D	SG05	D7606848X		1605420A	JORDAN	00500050		1	0810	KENAI	FALSE STATEMENT ON L		1
D	SG05	D7606847X		1605420A	JORDAN	0050		1	0809	SOLDOTNA	FALSE STATEMENT ON L		1
D	SG05	D7606832X01		1605420A	JORDAN J	00500050		1	0513	KENAI	FALSE STATEMENT ON L		1
D	SG05	D7607041X		1605420A	WALDEN	01000100		1	0102	KENAI	FALSE STATEMENT ON L		1
D	SP01	D7607227X		57040D1	WALDEN	01000100		3	0906	HOMER	SALMON CLOSED AREA		1
D	SP01	D7606997X		5704002	WALDEN	00500050		1	0621	KENAI	FISHING CLOSED WATER		1
D	SP01	D7607226		57040D1	WALDEN	01000100		3	0906	HOMER	SPORT FISH CLOSED AR		1
D	SP01	D7607021X01		57040D1	WALDEN	01000100		1	0626	KENAI	S/F CLOSED WATER		1
D	SP01	D7607022X01		57040D1	WALDEN	01000100		1	0626	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7606014K		57040A2	CARPENTER	01500150		1	0629	HOMER	SPORT FISH CLOSED WA		1
D	SP01	D7606996X		57040A1	WALDEN	01000100		1	0618	SOLDOTNA	SPORT FISH CLOSED AR		1
D	SP01	D7606013H		57040A2	CARPENTER	01500150		1	0629	KENAI	SPORT FISHING CLOSED		1
D	SP01	D7606995X		57040A1	WALDEN	01000100		1	0618	SOLDOTNA	SPORT FISH CLOSED AR		1
D	SP01	D7606994X		57040A1	WALDEN	01000100		1	0618	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606012H01		57040S	CARPENTER	01000100		1	0626	HOMER	SPORT FISH CLOSED WA		1
D	SP01	D7607031X		57040Q1	WALDEN	01000100		1	0627	KENAI	S/F CLOSED WATERS		1
D	SP01	D7606291V		54030	ARTS	01000100		1	0804	VALDEZ	TAKING SALMON CLOSED	6258	1
D	SP01	D7607030X		57040Q1	WALDEN	02000200		1	0627	KENAI	S/F CLOSED WATERS		1
D	SP01	D7606309V		540306	ARTS	00250025		2	0825	VALDEZ	TAKING SALMON CLOSED		1
D	SP01	D7606310V		54030B	SHORT	01000025		1	0829	VALDEZ	TAKING SALMON CLOSED		1
D	SP01	D7607038X		5703082	WALDEN	02500250		1	0702	KENAI	TAKING KING SALMON I		1
D	SP01	D7607029X		57040D2	WALDEN	01000100		1	0627	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7607009X02		57040Q1	WALDEN	01000100		1	0624	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7606312V		540308	SHORT	01000050		1	1017	VALDEZ	SPORT FISH CLOSED WA		1
D	SP01	D7607028X		57040Q1	PAINTER	01000100		1	0625	SOLDOTNA	SPORT FISH CLOSED AR		1
D	SP01	D7607027X		57040R	PAINTER	01000100		1	0626	SOLDOTNA	S/F CLOSED AREA		1
D	SP01	D7606947X02		57040A1	THOMPSON	DIS DIS		2	0608	KENAI	SPORT FISH IN CLOSED		2

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP01	D7606970X		57040D2	WALDEN	01000050		1	0615	KENAI	SPORT FISH IN CLOSED		1
D	SP01	D7606015H		570402	CARPENTER	01000100		1	0629	HOMER	SPORT FISH CLOSED WA		1
D	SP01	D7606939X01		57040S		ESSA			0606		SPORT FISH CLOSED WA		
D	SP01	D7606969X		57040D2	WALDEN	01000100		1	0615	KENAI	SPORT FISH IN CLOSED		1
D	SP01	D7606920X		5704002	WALDEN	01000100		3	0531	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606918X01		57040S	CARPENTER G	01000100		1	0529	HOMER	FISHING IN CLOSED AR		1
D	SP01	D7606958		57040S	WALDEN	03000075		1	0612	HOMER	FISHING CLOSED WATER		1
D	SP01	D7606917X		570405	CARPENTER	01000100		3	0529	HOMER	FISHING IN A CLOSED		1
D	SP01	D7606916X01		57040S	CARPENTER	01500150		2	0529	HOMER	SPORT FISH CLOSED WA		1
D	SP01	D7606915X02		5704002	WALDEN	01000100		1	0531	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7607061X		57040Q1	WALDEN	01000100		1	0713	KENAI	SPORT FISHING CLOSED		1
D	SP01	D7606993X		57040A1	WALDEN	01000100		1	0619	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606992X		57040A1	WALDEN	01000100		3	0619	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606991X		57040A1	WALDEN	01000100		1	0619	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606956		57040A1	WALDEN	01000100		1	0613	KENAI	SPORT FISHING CLOSED		1
D	SP01	D7606955X		57040A1	WALDEN	01000100		2	0613	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7606907X		57040L	JORDAN J	01000100		1	0521	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7606914X		57040C	WALDEN	01000100		1	0531	KENAI	S/F CLOSED WATERS		1
D	SP01	D7606959		57040	PAINTER	03000075		1	0612	HOMER	SPORT FISH CLOSED WA		1
D	SP01	D7606913X		57040A	WALDEN	01000100		1	0529	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7606912X		57040U	WALDEN	01000100		1	0530	KENAI	SPORT FISH CLOSED WA		1
D	SP01	D7606925X		5704021	THOMPSON	01000100		3	0529	KENAI	FISHING CLOSED AREA		1
D	SP01	D7606923X		5704001	WALDEN	00500050		1	0531	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7607032X01		57040A1	WALDEN	01000100		3	0620	KENAI	S/F IN CLOSED AREA		1
D	SP01	D7606922X		5704001		00500050		1	0531	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606921X		5704001	WALDEN	01000100		1	0531	SOLDOTNA	FISHING CLOSED AREA		1
D	SP01	D7606926X		57040A1	WALDEN	01000100		1	0530	KENAI	FISHING CLOSED AREA		1
D	SP03	D7607158X		42200	WALDEN	01000100		3	0730	KENAI	FAIL TO RELEASE SALM		1
D	SP03	D7607159X		42200	WALDEN	01000100		1	0727	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607160X		42200	WALDEN	01000100		3	0724	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607161X		42070	WALDEN	00500050		1	0731	KENAI	TREBLE HOOK OVER 1/4		1
D	SP03	D7607162K		42200	PAINTER	01000100		1	0801	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607163		42200	PAINTER	01000100		1	0731	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607164X01		42200	PAINTER			2	0731	KENAI	ATTEMPTING TO SNAG		2
D	SP03	D7606929X		42200	THOMPSON	DIS			0604	KENAI	FAIL TO RELEASE		
D	SP03	D7607165X01		42200	WALDEN	00500050		2	0729	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607157X		42200	WALDEN	DIS DIS		2	0728	KENAI	ATTEMPTED SNAGGING		
D	SP03	D7607166X01		42200	WALDEN	01000100		1	0729	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607156X		42200	WALDEN	01000100		1	0731	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607167X01		42200	WALDEN	01000100		3	0724	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607167X02		42070 2	WALDEN	01000100		1	0724	KENAI	SPORT FISH W/ILLEGAL		1
D	SP03	D7607168X		42200	WALDEN	01000100		1	0729	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607170X		42200	HOEKMAN	01000100		3	0731	KENAI	SNAGGING FISH		1
D	SP03	D7607172X		42200	HOEKMAN	01000100		1	0801	KENAI	SNAGGING FISH		1
D	SP03	D7606930X		42200	THOMPSON	DIS			0604		ATTEMPT TO SNAG		
D	SP03	D7607175X		42200	WALDEN	01000100		3	0724	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607176X		42200	WALDEN	01000100		3	0724	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607178X		42200	WALDEN	01000050		3	0730	KENAI	ATTEMPT TO SNAG FISH		1
D	SP03	D7607183X		42200	WALDEN	01000100		3	0803	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607184X01		42200	WALDEN			2	0803	KENAI	FAIL TO RELEASE SNAG		2
D	SP03	D7607153X		42200	WALDEN	01000100		1	0803	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7606984X02		57040G1	WALDEN	01000100		1	0620	KENAI	ILLEGAL GEAR - FLY A		1
D	SP03	D7607186X		42200	WALDEN	01000100		1	0805	KENAI	ATTEMPT TO SNAG FISH		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP03	D7607187X		42200	HOEKMAN	DIS DIS		2	0805	KENAI	SNAGGING FISH		2
D	SP03	D7607018X01		42200	WALDEN	01000100		1	0625	KENAI	ATTEMPT TO SNAG FISH		1
D	SP03	D7607189X		42200	WALDEN	01000100		1	0729	KENAI	SNAGGING FISH		1
D	SP03	D7607190X		42200	WALDEN	01000100		1	0803	KENAI	FAIL TO RELEASE FOUR		1
D	SP03	D7607191X		42200		ESSA			0805		SNAGGING		
D	SP03	D7606977		42200	WALDEN			2	0615	KENAI	ATTEMPTING TO SNAG		2
D	SP03	D7607195X		42070 2	WALDEN	01000100		3	0815	KENAI	TREBLE HOOK OVER 1/4		1
D	SP03	D7607196X		42200	WALDEN	01000100		1	0815	KENAI	FAIL TO RELEASE		1
D	SP03	D7606203R		39190	JONES	DIS			0814	CORDOVA	DRIVING SALMON		2
D	SP03	D7607200X		42200		ESSA			0725		ATTEMPT TO SNAG FISH		
D	SP03	D7607201X		42200	WALDEN	01000100		1	0805	KENAI	SNAGGING SALMON		1
D	SP03	D7607202X		42200	WALDEN	00250025			0816		FAIL TO RELEASE SNAG		1
D	SP03	D7607203X		42200	WALDEN	01000100		1	0817	KENAI	FAIL TO RELEASE		1
D	SP03	D7607204X		42200	HOEKMAN	01000100		1	0822	KENAI	FAIL TO RELEASE FISH		1
D	SP03	D7607205X		42.200	WALDEN	00500050		2	0821	KENAI	FAIL TO RELEASE FOUL		1
D	SP03	D7607206X				01000100		1	0821	KENAI	FAIL TO RELEASE SNAG		
D	SP03	D7607207X		42200	WALDEN	01000100		3	0820	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607054X02		57040M	PAINTER	00500050		1	0710	KENAI	TREBLE HOOK IN SINGL		1
D	SP03	D7606987X02		57040M	WALDEN	01000100		3	0620	KENAI	TREBLE HOOK - SINGLE		1
D	SP03	D7607057X		57040Q1	WALDEN	01000100		1	0711	KENAI	ILLEGAL GEAR IN FLY		1
D	SP03	D7606976X		42200	WALDEN	01000100		1	0615	KENAI	ATTEMPT TO SNAG		1
D	SP03	D7606974X02		420702	WALDEN	01000100		1		KENAI	SPORT FISH W/ILLEGAL		1
D	SP03	D7606963X		42200	PAINTER	01000100		3	0614	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607149X		42200	WALDEN	01000100		3	0724	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607148X		42200	WALDEN	01000100		3	0729	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607221X		57040Q1	WALDEN	01000100		1	0828	KENAI	TREBLE SPOON IN FLY		1
D	SP03	D7606988X02		57040M	WALDEN	01000100		1	0618	KENAI	ILLEGAL GEAR - MOOSE		1
D	SP03	D7607072X		42200	WALDEN	01000100		3	0717	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607147X		42200	WALDEN	01000100		1	0728	KENAI	FAIL TO RELEASE		1
D	SP03	D7607145X		57040Q	WALDEN	01000100		1	0731	KENAI	TREBLE HOOK IN FLY H		1
D	SP03	D7607144X		42200	WALDEN	01000100		1	0801	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607063X		542200	HOEKMAN	01000100		3	0713	KENAI	INTENTIONALLY SNAG S		1
C	SP03	D7607062X		42200	WALDEN	00500050		3	0714	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607143X		42200	WALDEN	01000100		1	0729	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607091X		42200	PAINTER	01000100		1	0721	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607087X02		42200	WALDEN	01000100		3	0721	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7606111M		42200	SEIBEL	00500050		3	0703	SEWARD	FAIL TO RELEASE FISH		1
D	SP03	D7606108M		420702	JORDAN J	01000025		1	0521	SEWARD	SPORT FISH-ILLEGAL G		1
D	SP03	D7607142X01		42200	WALDEN	DIS DIS		2	0730	KENAI	ATTEMPT TO SNAG FISH		2
D	SP03	D7607140X		42200	WALDEN	01000100		1	0725	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607139X		42200	WALDEN	01000100		1	0725	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607059X02		42070B	WALDEN	01000100		1	0711	KENAI	SPORT FISH W/ILLEGAL		1
D	SP03	D7607138X02		42070 2	WALDEN	01000100		1	0724	KENAI	ILLEGAL GEAR		1
D	SP03	D7607060X01		420702		ESSA			0710		ILLEGAL GEAR-SPORT F		
D	SP03	D7607059X03		42200	WALDEN	01000100			0711	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607095X		542200	WALDEN	01000100		3	0722	SOLDOTNA	ATTEMPTING TO SNAG		1
D	SP03	D7606988X01		42200	WALDEN	01000100		1	0618	KENAI	FAILURE TO RELEASE		1
D	SP03	D7607138X01		42200	WALDEN	01000100		1	0724	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606938X		42200	WALDEN	01000100		2	0605	KENAI	FAIL TO RELEASE FOUL		1
D	SP03	D7607137X		420702	WALDEN	01000100		3	0724	KENAI	ILLEGAL GEAR		1
D	SP03	D7607004X01		42200					0623		FAIL TO RELEASE SNAG		
D	SP03	D7607003X02		57040M	WALDEN	01000100		1	0623	KENAI	TREBLE HOOK IN SINGL		1
D	SP03	D7606939X02		420702		ESSA			0606		SPORT FISH W/ILLEGAL		

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP03	D7607013X01		42200	WALDEN	01000100		1	0625		ATTEMPTING TO SNAG		1
D	SP03	D7607012X02		57040M	WALDEN	01000100			0625	KENAI	TREBLE HOOK - SINGLE		1
D	SP03	D7607007X		42200	WALDEN	01000100		3	0623	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607004X02		57040M					0623		TREBLE HOOK IN SINGL		
D	SP03	D7607009X01		42200	WALDEN	01000100		1	0624	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7606968X		42200	WALDEN	01000100		1	0614	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7606948X		42200	WALDEN	01000100		3	0611	KENAI	SNAGGING		1
D	SP03	D7607136X		42200	WALDEN	01000100		1	0724	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607135X		42200	WALDEN	01000100		1	0724	KENAI	FAILED TO RELEASE SN		1
D	SP03	D7607002X02		57040M	WALDEN	01000100		1	0623	KENAI	TREBLE HOOK - SINGLE		1
D	SP03	D7607002X01		42200	WALDEN	01000100		1	0623	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607134X		42200	WALDEN	01000100		1	0724	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607003X01		42200	WALDEN	01000100		1	0623	KENAI	SNAGGING		1
D	SP03	D7606947X03		420704	THOMPSON	DIS DIS		2	0608		ATTEMPT TO SPEAR SAL		2
D	SP03	D7606191R		42020	JONES	10000300	0030	1	0621	CORDOVA	FISH UNLAWFUL GEAR		1
D	SP03	D7607105X		42200	WALDEN	01000100		1	0722	SOLDOTNA	ATTEMPTING TO SNAG		1
D	SP03	D7607104X		42200	WALDEN	01000100		3	0722	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7606944X		42200	WALDEN	00250025		2	0607	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606946X		42200	THOMPSON	01000100		3	0608	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606945X		42200					0608		ATTEMPT TO SNAG FISH		
D	SP03	D7606192R		42020	JONES	10000500	0030	1	0621	CORDOVA	FISH UNLAWFUL GEAR		1
D	SP03	D7607133X		42200	WALDEN	01000100		1	0725	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607132X		42200	WALDEN	01000025		1	0725	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606112M		42200	SEIBEL	00500050		3	0703	SEWARD	FAIL TO RELEASE FISH		1
D	SP03	D7607107X		42200	WALDEN	01000100		3	0720	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607060X02		57040M		ESSA			0710		TREBLE HOOK/SINGLE H		
D	SP03	D7607026X		42200	PAINTER	01000100		1	0627	KENAI	SNAGGING FISH		1
D	SP03	D7607131X		42200	WALDEN	01000100			0730	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606971X		42200	WALDEN	01000100		1	0616	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7606943X		42200	WALDEN	01000100		1	0607	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607130X01		42200	WALDEN	DIS		2	0729	KENAI	ATTEMPTING TO SNAG		
D	SP03	D7607128X		42200	WALDEN	01000100		1	0725	KENAI	FAIL TO RELEASE		1
D	SP03	D7607039X		42200	WALDEN	01000100		1	0704	KENAI	SNAGGING SALMON		1
D	SP03	D7606942X		42200		ESSA			0607		SNAGGING SALMON		
D	SP03	D7607127X02		42070 2	WALDEN	01000100		1	0724	KENAI	SPORT FISH W/ILLEGAL		1
D	SP03	D7607108X		42200	WALDEN	01000100		1	0721	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7606940X		42200		ESSA			0604		ATTEMPTING TO SNAG		
D	SP03	D7607127X01		42200	WALDEN	01000100		3	0724	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7606987X01		42200	WALDEN	01000100			0620	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606986X		42200	THOMPSON	01000100		3	0619	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606985X		42200	WALDEN	01000100		3	0620	KENAI	ATTEMPT TO SNAG FISH		1
D	SP03	D7606295V		42200	ARTS	01000100		1	0804	VALDEZ	SNAGGING FISH		1
D	SP03	D7607126X		42200	WALDEN	01000100		1	0723	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607125X02		42070	WALDEN	01000100		1	0723	KENAI	TREBLE HOOK OVER 1/4		1
D	SP03	D7606951X		42200	WALDEN	01000100		1	0612	KENAI	ATTEMPT TO SNAG		1
D	SP03	D7606931X		42200	THOMPSON	DIS			0604		ATTEMPT TO SNAG		
D	SP03	D7607111X		42200	PAINTER	00500050		2	0725	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607110X		42200	WALDEN	01000100		3	0720	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607037		42200	WALDEN			2	0703	KENAI	SNAGGING SALMON		2
D	SP03	D7607109X02		42070 1	WALDEN	01000100		1	0720	KENAI	ILLEGAL GEAR		1
D	SP03	D7607085X		42200	PAINTER	01000025		1	0719	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607084X		42200	PAINTER	01000100		1	0719	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607083X02		42070	HOEKMAN	01000100		1	0719	KENAI	ILLEGAL GEAR		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP03	D7606952		42200	WALDEN	00500050		3	0613	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606843X02		420701	THOMPSON	01000050		1	0222	KENAI	ILLEGAL GEAR		1
D	SP03	D7606843X01		42200	THOMPSON	01000050		1	0222	KENAI	S/F SNAGGING		1
D	SP03	D7607109X01		42200	WALDEN	01000100		1	0720	KENAI	FAILURE TO RELEASE		1
D	SP03	D7607035X20		42200	WALDEN	00500050		1	0703	KENAI	S/F-FAIL TO RELEASE		1
D	SP03	D7607035X10		42200	WALDEN	00500050		1	0703	KENAI	FAIL TO RELEASE-S/F		1
D	SP03	D7607103X		42200	PAINTER	01000100		1	0724	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607102X		42200	PAINTER	01000100		1	0724	KENAI	FAIL TO RELEASE FISH		1
D	SP03	D7607033X01		42200	WALDEN	01000100		1	0624	KENAI	FAIL TO RELEASE FOUL		1
D	SP03	D7606984X01		42200	WALDEN	01000100		1	0620	KENAI	ATTEMPT TO SNAG FISH		1
D	SP03	D7606932X		42200	THOMPSON	DIS			0604		ATTEMPT TO SNAG		
D	SP03	D7607012X01		42200	WALDEN	01000100		1	0625	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606978X		42200	PAINTER	01000100		1	0618	KENAI	SNAGGING FISH		1
D	SP03	D7607125X01		42200	WALDEN	01000100		1	0723	KENAI	FAIL TO RELEASE		1
D	SP03	D7607124X						2	0728	KENAI	ATTEMPTED SANGGING		
D	SP03	D7606974X01		42200	WALDEN	01000100		1	0615	KENAI	ATTEMPT TO SNAG		1
D	SP03	D7606528K		42200	WELLMAN	00500050	0030	3	0708	NAKNEK	SNAGGING SALMON		1
D	SP03	D7607123X		42200	WALDEN	01000100		1	0723	SOLDOTNA	ATTEMPTING TO SNAG		1
D	SP03	D7506936X		42200	WALDEN	00500050		2	0605	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607097X		42200	PAINTER	01000100		1	0721	KENAI	FAIL TO RELEASE FISH		1
D	SP03	D7607088I		42200	WALDEN	01000100		1	0719	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607071X		42200	HOEKMAN	DIS DIS		2	0717		ATTEMPTING TO SNAG		
D	SP03	D7606764I		66030B2	MAYBERRY	00250025		1	0709	NAKNEK	MULT HOOK/SINGLE HOO	8754	1
D	SP03	D7607054X01		42200	PAINTER	01000100		1	0710	KENAI	ATTEMPTNG TO SNAG		1
D	SP03	D7607053X		42200	WALDEN	01000100		1	0707	KENAI	FAIL TO RELEASE		1
D	SP03	D7606763I		66030B2	MAYBERRY	00250025		1	0709	NAKNEK	MULT HOOK SINGLE HOO	8753	1
D	SP03	D7606762I		66030B2	MAYBERRY	00250025		1	0709	NAKNEK	MULT HOOK SINGLE HOO	8752	1
D	SP03	D7607122X		42200	WALDEN	01000100		1	0723	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607120X		42200	WALDEN	01000100		1	0723	SOLDOTNA	ATTEMPT TO SNAG		1
D	SP03	D7607083X01		42200	HOEKMAN	01000100		1	0719	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607119X		42200	WALDEN	01000100		3	0728	KENAI	ATTEMPTED SNAGGING		1
D	SP03	D7607118X02		42200	WALDEN	01000100		1	0725	KENAI	SNAGGING SALMON		1
D	SP03	D7607098X		42200	PAINTER	01000100		1	0723	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607077X		42200	WALDEN			2	0717	KENAI	ATTEMPTING TO SNAG		2
D	SP03	D7607048X01		42200	WALDEN	01500150		2	0706	KENAI	SNAGGING		1
D	SP03	D7607013X02		57040M	WALDEN	01000100		1	0625	KENAI	TREBLE HOOK/SINGLE H		1
D	SP03	D7607082X		42200	HOEKMAN	01000100		3	0719	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7607047X		42200	HOEKMAN	01000100		1	0707	SOLDOTNA	ATTEMPTING TO SNAG		1
D	SP03	D7607046X		42200		ESSA			0706		SNAGGING		
D	SP03	D7607118X01		42070	WALDEN	0100		1	0725		SPORT FISH W/ILLEGAL		
D	SP03	D7607073X		42200	WALDEN	00500050		2	0717	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607049X		42200	WALDEN	01500150		2	0706	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607112X		42200	WALDEN	01000100		3	0723	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607100X01		42200	PAINTER	01000100		3	0720	KENAI	ATTEMPTED SNAGGING		1
D	SP03	D7607020X		42200	WALDEN	01000100		1	0625	KENAI	ATTEMPT TO SNAG		1
D	SP03	D7607069X		42200	PAINTER	01000100		1	0718	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607067X01		42200	PAINTER	02000200		2	0716	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606964X01		42200	PAINTER	01000100		1	0614	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7606950X		42200	WALDEN	01000100		1	0612	KENAI	ATTEMPT TO SNAG		1
D	SP03	D7607050X		42200	WALDEN	01000100		1	0705	KENAI	ATTEMPTING TO SNAG F		1
D	SP03	D7607019X01		42200	PAINTER	01000100		1	0625	KENAI	ATTEMPT TO SNAG FISH		1
D	SP03	D7607014X		42200	WALDEN	01000100		1	0625	KENAI	FAIL TO RELEASE SNAG		1
D	SP03	D7606949X		42200	WALDEN	01000100		1	0612	KENAI	ATTEMPT TO SNAG		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP03	D7607117X		42200	WALDEN	01000100		1	0725	KENAI	SNAGGING SALMON		1
D	SP03	D7607113X		42200	PAINTER	01000100		3	0725	KENAI	ATTEMPT TO SNAG FISH		1
D	SP03	D7607089I		42200	WALDEN			2	0719	KENAI	FAIL TO RELEASE FISH		2
D	SP03	D7607096X		42.200	WALDEN	01000100		1	0724	KENAI	ATTEMPTED SNAGGING		1
D	SP03	D7607090X		42200	WALDEN	01000100		1	0720	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607087X01		57040M	WALDEN	01000100		3	0721	KENAI	TREBLE HOOK CLOSED A		1
D	SP03	D7607076X		42200	WALDEN			2	0717	KENAI	ATTEMPTING TO SNAG		2
D	SP03	D7606964X02		42070 1	PAINTER	01000100		1	0614	KENAI	ILLEGAL GEAR		1
D	SP03	D7607086X		42200	WALDEN	01000100		1	0719	KENAI	ATTEMPTING TO SNAG		1
D	SP03	D7607075		42200	WALDEN	01000100		3	0717	KENAI	ATTEMPTED SNAGGING		1
D	SP03	D7607074X		42200	WALDEN	00500050		2	0717	KENAI	ATTEMPTING TO SNAG		1
D	SP04	D7607022X02		05330A	WALDEN	01000100		1	0626	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7606998X		1605330A	WALDEN	01000100		1	0619	KENAI	S/F WITHOUT LICENSE		1
D	SP04	D7607048X02		1605330A	WALDEN	DIS			0706	KENAI	NO SPORT FISH LICENS		
D	SP04	D7607021X02		1605330A	WALDEN	01000100		1	0626	KENAI	S/F NO LICENSE		1
D	SP04	D760709?X		1605330A	PAINTER	01000025		1	0723	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7606012H02		05330A	CARPENTER	01000100		1	0626	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7606869X		1605330A	WALDEN	00750075		1	0413	KENAI	DIG RAZOR CLAMS WITH		
D	SP04	D7606867X		1605330A	JORDAN	00500050		1	0402	KENAI	DIG CLAMS WITHOUT LI		1
D	SP04	D7606309V		1605330	EAMES	01000075		1	0821	VALDEZ	S/F W/O LICENSE		1
D	SP04	D7606307V		1605330	EAMES	01000075		1	0821	VALDEZ	S/F W/O LICENSE		1
D	SP04	D7607100X02		1605330A	PAINTER	DIS		2	0720	KENAI	NO SPORT FISHING LIC		2
D	SP04	D7606306V		1605330	SHORT	01000100		1	0821	VALDEZ	SPORT FISH W/O LICEN		1
D	SP04	D7606305V		1605330	SHORT	01000075		1	0821	VALDEZ	SPORT FISH W/O LICEN		1
D	SP04	D7606849X		1605330A	JORDAN J	00500050		1	0310	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7606292V		1605330	ARTS	01000100		1	0805	VALDEZ	SPORT FISHING W/O A	6259	1
D	SP04	D7606870X		1605330A	WALDEN	01000100		1	0413	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606106M		1605330A	BAIRD	01000025		1	0510	SEWARD	S/F WITHOUT LICENSE		1
D	SP04	D7606105M		1605330A	JORDAN J	01000050		1	0518	SEWARD	SPORT FISH WITHOUT L		1
D	SP04	D7606878X		1605330A	JORDAN J	00500050		1	0417	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606877X		1605330A	WALDEN	00500050		1	0417	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606876X		1605330A	WALDEN	00500050		1	0417	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606293V		1605330A	EAMES	01000100		3	0801	VALDEZ	SPORT FISH W/O LICEN		1
D	SP04	D7606875X		1605330A	WALDEN	00500050		1	0416	KENAI	DIG RAZOR CLAMS W/O		1
D	SP04	D7606873X		1605330A	JORDAN J	00500050		1	0414	KENAI	SPORT FISH WITHOUT L		1
D	SP04	D7606294V		1605330A	EAMES	01000100		3	0801	VALDEZ	S/F W/O LICENSE		1
D	SP04	D7606886X		1605330A	WALDEN	00250025		1	0414	KENAI	TAKING RAZOR CLAMS W		1
D	SP04	D7606885X		1605330A	WALDEN	01000100		1	0418	KENAI	TAKING RAZOR CLAMS W		1
D	SP04	D7606884X		1605330A	WALDEN	00500050		3	0418	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606890X		1605330A	JORDAN J	00500050		1	0513	KENAI	DIG RAZORS WITHOUT L		1
D	SP04	D7606889X		1605330A	JORDAN J	00500050		1	0513	KENAI	TAKE RAZORS WITHOUT		1
D	SP04	D7606883X01		1605330A	JORDAN	00500050		1	0418	KENAI	TAKING RAZOR CLAMS W		1
D	SP04	D7606882X		1605330A	JORDAN	00500050		1	0918	KENAI	TAKING RAZOR CLAMS W		1
D	SP04	D7606881X		1605330A	WALDEN	01000100		1	0418	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606879X		1605330A	WALDEN	00500050		1	0417	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7607000Y		1605330A	CORNWALL	00250010		1	0514	COLD BAY	SPORT FISH W/O LICEN		1
D	SP04	D7607129X		1605320A	WALDEN	00500050		1	0724	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7607001X		1605330A	CORNWALL	00250010		1	0516	COLD BAY	SPORT FISH W/O LICEN		1
D	SP04	D7606999X		1605330A	WALDEN	DIS			0619	KENAI	S/F WITHOUT LICENSE		
D	SP04	D7606372K		1605330A	WELLMAN	01000025	0030	1	0620	KING SALM	SPORT FISH W/O LICEN	6553	1
D	SP04	D7606947X01		1605330A	THOMPSON	DIS DIS		2	0608	KENAI	SPORT FISH W/O LICEN		2
D	SP04	D7606625D		1605330A	HEIER	00150015		3	0731	DILLINGHA	SPORT FISHING W/O A	6543	1
D	SP04	D7606624D		1605330A	HEIER	00150015		3	0731	DILLINGHA	SPORT FISHING W/O A	6541	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP04	D7607138X03		1605330A	WALDEN	00500050					SPORT FISH W/O LICEN		1
D	SP04	D7606918 02		1605330A	CARPENTER	01000050		1	0529	HOMER	NO SPORT FISH LICENS		1
D	SP04	D7606916X02		1605330A	CARPENTER	01000100		2	0529	HOMER	SPORT FISH W/O LICEN		1
D	SP04	D7606915X01		1605330A	WALDEN	01000100		1	0531	SOLDOTNA	FISHING W/O LICENSE		1
D	SP04	D7606110M		1605330A	SEIBEL	00500050		1	0612	SEWARD	SPORT FISH W/O LICEN		1
D	SP04	D7606109M		1605330A	SEIBEL	00500050		1	0612	SEWARD	SPORT FISH W/O LICEN		1
D	SP04	D7607233X		1605330A	TAYLOR	01000025		1	0919	SEWARD	SPORT FISHING W/O LI		1
D	SP04	D7607018X02		1605330A	WALDEN	01000100		1	0625	KENAI	S/F WITHOUT LICENSE		1
D	SP04	D7606891X		1605330A	WALDEN	DIS			0514	SOLDOTNA	TAKING CLAMS W/O LIC		
D	SP04	D7606181R		1605330	ROSCOVIUS	00250025		1	0517	CORDOVA	SPORT FISH W/O LICEN		1
D	SP04	D7607059X01		1605330	WALDEN	00500050		1	0711	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7606897X		1605330A	WALDEN	00500050			0516	KENAI	TAKE CLAMS W/O LICEN		1
D	SP04	D7606895X		1605330A	WALDEN	SIS		1	0515	KENAI	TAKE RAZOR CLAMS W/O		1
D	SP04	D7606187R		1605330	ROSCOVIUS	00250025		1	0609	CORDOVA	SPORT FISH NO LICENS		1
D	SP04	D7606894X		1605330A	WALDEN	00500050			0515	KENAI	TAKE CLAMS W/O LICEN		1
D	SP04	D7606893X		1605330A	PAINTER	00500050		1	0515	KENAI	TAKING RAZOR CLAMS W		1
D	SP04	D7606902X		1605330A	JORDAN J	00500050		3	0516	SOLDOTNA	TAKING CLAM W/O LICE		1
D	SP04	D7606901X		05330A	WALDEN	0050		3	0516	SOLDOTNA	TAKING CLAM W/O LICE		1
D	SP04	D7606898K		1605330A	WALDEN	DIS DIS		2	0516	KENAI	TAKE RAZOR CLAMS W/O		
D	SP04	D7607219X		1605330A	HOEKMAN	DIS DIS			0822	KENAI	SPORT FISHING W/O LI		2
D	SP04	D7607055X		1605330A	WALDEN	0100		1	0711	KENAI	NO SPORT FISH LICENS		1
D	SP04	D7607197X		1605330A	WALDEN			2	0815	KENAI	SPORT FISH W/O LICEN		2
D	SP04	D7607188X		1605330A	HOEKMAN	DIS DIS			0803	KENAI	NO FISHING LIC IN PO		2
D	SP04	D7607173X		1605330A	HOEKMAN	01000100		1	0727	KENAI	SPORT FISH W/O LICEN		1
D	SP04	D7607164X02		1605330A	PAINTER	DIS		2	0731	KENAI	SPORT FISH W/O LICEN		
D	SP05	D7607166X02		1605330A	WALDEN	01000025		1	0625	KENAI	FALSE STATEMENT ON S		1
D	SP05	D7606904X		1605420A	WALDEN	0100		1	0513	KENAI	FALSE STATEMENT ON L		1
D	SP05	D7606905X		1605420A	WALDEN	0100		1	0513	KENAI	FALSE STATEMENT ON L		1
D	SP05	D7607251X01		1605420A	WALDEN	00500050		1	0603	KENAI	FALSE STATEMENT ON S		1
D	SP05	D7607259X01		1605420A	WALDEN		0005	1	0312	KENAI	FALSE STATEMENT ON S		1
D	SP05	D7607265X		1605420A	WALDEN	01000100		3	0417	KENAI	FALSE STATEMENT ON S		1
D	SP05	D7607302K01		05420A	MAYBERRY	01000100	0030	3	0416	NAKNEK	FALSE STATEMENT ON L		1
D	SP05	D7606369		1605420A	MAYBERRY	01000100	0030	1	0526	NAKNEK	FALSE STATEMENT FOR		1
D	SP05	D7606871X		1605420A	WALDEN		00200020	1	0721	KENAI	FALSE STATEMENT ON S		1
D	SP05	D7606868X		1605420A	WALDEN	01000100		1	0118	KENAI	FALSE STATEMENT ON L		1
D	SP05	D7606550D01		1605420A					0717		FALSE STATEMENT ON		
D	SP05	D7607067X02		72010	PAINTER	DIS		2	0716	KENAI	FAIRL TO SHOW S/F LI		2
D	SP06	D7607033X02		5704002	WALDEN	01000100		1	0624	KENAI	OVER LIMIT RED SALMO		1
D	SP06	D7606888X		57080B	JORDAN	01000100		1	0513	KENAI	OVERLIMIT OF RAZOR C		1
D	SP06	D7606887X		57080B	WALDEN	01000100		3	0430	KENAI	OVERLIMIT OF RAZOR C		1
D	SP06	D7607011X		5704002	WALDEN	00500050		3	0624	KENAI	EXCEEDING BAG LIMIT		1
D	SP06	D7607009X03		5704002	WALDEN	01000100		1	0624	KENAI	OVERLIMIT SALMON		1
D	SP06	D7607211X		57020 2	WALDEN	01000100		1	0829	KENAI	EXCEED BAG LIMIT		1
D	SP06	D7607213X		570202	WALDEN	01000100		1	0829	KENAI	EXCEEDED DAILY BAG L		1
D	SP06	D7607212X		57020 2	WALDEN	01000100		1	0829	KENAI	EXCEEDED DAILY BAG L		1
D	SP06	D7606892X		57080B	JORDAN J	00500050		1	0513	KENAI	OVERLIMIT RAZOR CLAM		1
D	SP06	D7607232X		57020 2	WALDEN	01000100		1	0915	KENAI	EXCEEDING BAG LIMITS		1
D	SP06	D7607184X02		570202	WALDEN	01000100		2	0803	KENAI	OVERLIMIT OF SALMON		1
D	SP08	D7606911X		570301	WALDEN	01000100		1	0529	KENAI	FAIL TO VALIDATE SAL		1
D	SP08	D7606957X		5703081	PAINTER	01000100		1	0612	KENAI	FAIL TO VALIDATE KS		1
D	SP08	D7606953X		55703081	THOMPSON	04000150		3	0612	SOLDOTNA	TAKE SALMON W/O PUNC		1
D	SP08	D7606954X		55703081	THOMPSON	02000050		1	0612	SOLDOTNA	FISHING W/O PUNCH CA		1
D	SP08	D7606933X		5703081	WALDEN	00250025		1	0605	KENAI	FAIL TO VALIDATE K S		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
D	SP08	D7606937X		57030B1	THOMPSON	01000100		3	0605	SOLDOTNA	FAILURE TO VALIDATE		1
D	SP08	D7606965X		557030B1	THOMPSON	00500050		3	0613	SOLDOTNA	FAILURE TO VALIDATE		1
D	SP14	D7607034X		72020	WALDEN	01500150		1	0701	KENAI	POSSESSION ILLEGALLY		1
D	SP23	D7606380K		39890A	WELLMAN	0200	0030	1	0629	NAKNEK	NON-RESIDENT SUBS FI		1
D	SP23	D7606632D10		06980	BLODGETT	01000025		1	0906	DILLINGHA	SUB FISHING W/O PERM	12202	1
D	SP23	D7606627D22		39890B	BLODGETT	DIS		2	0819	DILLINGHA	SUB F WITH EXCESS GE		2
D	SP23	D7606627D21		06980	BLODGETT	DIS		2	0819	DILLINGHA	SUB F W/O PERMIT		2
D	SP23	D7606627D12		39890B	BLODGETT	04000200		2	0819	DILLINGHA	SUB F WITH EXCESS GE		1
D	SP23	D7606633D20		06931	BLODGETT	03000100			0906	DILLINGHA	ILLEGAL METHOD & MEA	12205	1
D	SP23	D7606633D10		06931	BLODGETT	03000300		3	0906	DILLINGHA	ILLEGAL METHOD & MEA	12204	1
D	SP23	D7606632D20		06980	BLODGETT	01000025		1	0906	DILLINGHA	SUB FISHING W/O PERM	12203	1
D	SP23	D7606627D11		06980	BLODGETT	01000050		2	0819	DILLINGHA	SUB F W/O PERMIT		1
D	SP23	D7606017H05		21930F	CARPENTER	01500150		3	0719		ILLEGAL GEAR		1
D	SP60	D7607130X02		1130315	WALDEN	DIS DIS		2	0729	KENAI	DESTROY EVIDENCE		
D	SP60	D7607142X02		1130315	WALDEN	DIS DIS		2	0730	KENAI	CONCEAL EVIDENCE		2
D	SP60	D7607032X02		1130315	WALDEN	DIS		2	0620	KENAI	CONCEAL EVIDENCE		2
E	CF01	E7600450K40		183502	RHODES	DIS		2	0712	KODIAK	C/F SALMON CLOSED WA		2
E	CF01	E7600450K30		183502	RHODES	DIS		2	0712	KODIAK	C/F SALMON CLOSED AR		2
E	CF01	E7600450K20		183502	RHODES	DIS		2	0712	KODIAK	C/F SALMON CLOSED AR		2
E	CF01	E7600450K10		183502	RHODES	DIS		2	0712	KODIAK	C/F CALMON CLOSED AR		2
E	CF01	E7600630K50		39290A	CONVERSE	50002500	0060	2	0816	KODIAK	COMM FISHING CLOSED		1
E	CF01	E7600710K20		31415A2	RHODES	SIS		1	0910	KODIAK	C/F SHRIMP CLOSED AR		1
E	CF01	E7600710K10		31415A2	RHODES	SIS		1	0910	KODIAK	C/F SHRIMP CLOSED AR		1
E	CF01	E7600710K30		31415A2	RHODES	SIS		1	0910	KODIAK	C/F SHRIMP CLOSED AR		1
E	CF01	E7600630K40		39290A	CONVERSE	50002500	0060	2	0816	KODIAK	COMM FISHING CLOSED		1
E	CF01	E7600630K30		39290A	CONVERSE	50002500	0060	2	0816	KODIAK	COMM FISHING CLOSED		1
E	CF01	E7600630K20		39290A	CONVERSE	50002500	0060	2	0816	KODIAK	COMM FISHING CLOSED		1
E	CF01	E7600630K10		39290A	CONVERSE	50005000	0090	2	0816	KODIAK	COMM FISHING CLOSED		1
E	CF01	E7600672K		34410 1	RHODES	50003000		2	0830	KODIAK	COMM FISH CRAB CLOSE		1
E	CF01	E7601000K		34435D	RHODES	0250		1	1007	KODIAK	C/F KING CRAB CLOSED		1
E	CF01	E7600505S		093109C	WINN	04000175		1	0617	FALSE PAS	GILL NET/CLOSED WATE		1
E	CF01	E7600512K10		183501D	RHODES	10001000		1	0727	KODIAK	C/F CLOSED WATERS		1
E	CF01	E7600512K30		183501D	RHODES	05000500		1	0727	KODIAK	C/F CLOSED WATERS		1
E	CF01	E7600512K20		183501D	RHODES	05000500		1	0727	KODIAK	C/F CLOSED WATERS		1
E	CF01	E7600811S60		9.350B24	WINN			2	0723	SAND PT	CLOSED WATERS/COMM F		2
E	CF01	E7600811S50		9.350B24	WINN			2	0723	SAND PT	CLOSED WATERS/COMM F		2
E	CF01	E7600811S40		9.350B24	WINN			2	0723	SAND PT	CLOSED WATERS/COMM F		2
E	CF01	E7600811S30		9.350B24	WINN			2	0723	SAND PT	CLOSED WATERS/COMM F		2
E	CF01	E7600811S20		9.350B24	WINN			2	0723	SAND PT	CLOSED WATERS COMM F		2
E	CF01	E7600811S10		9350B24	WINN			2	0723	SAND PT	CLOSED WATERS/COMM F		2
E	CF02	E7600536K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COMM FISH PRIOR TO W	11958	
E	CF02	E7600535K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COMM FISH PRIOR TO W	12050	
E	CF02	E7600527K		18320	STARBARD	DIS			0725	ZACHER BA	COMM FISH PRIOR WEEK	12042	
E	CF02	E7600526K		18320	STARBARD	DIS			0725	ZACHER BA	COMM FISH PRIOR TO W	12043	
E	CF02	E7600525K		18320	STARBARD	DIS			0725	ZACHER BA	COMM FISH PRIOR TO W	12045	
E	CF02	E7600524K		18320	STARBARD	DIS			0725	ZACHER BA	COMM FISH PRIOR TO W	11963	
E	CF02	E7600533K		18320	STARBARD	DIS			0725	ZACHER BA	COMM FISH PRIOR TO W	12048	
E	CF02	E7600532K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COMM FISH PRIOR TO W	12049	
E	CF02	E7600529K		18320	STARBARD	DIS			0725	KODIAK IS	COMM FISH PRIOR TO W	11957	
E	CF02	E7600523K		18320	STARBARD	DIS				ZACHER BA	COMM FISH PRIOR TO W	11959	
E	CF02	E7600506S		093109C	WINN	04000175		1	0621	FALSE PAS	GILL NET/CLOSED PERI		1
E	CF02	E7600539K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COM FISH PRIOR TO WE	12038	
E	CF02	E7600538K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COMM FISH PRIOR TO W	12041	

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
E	CF02	E7600537K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COMM FISH PRIOR TO W	12037	
E	CF02	E7600541K		18320	DEVERS	DIS DIS			0725	KODIAK ZA	COMM FISH PRIOR TO W	12040	
E	CF02	E7600540K		18320	DEVERS	DIS DIS			0725	KODIAK	COMM FISH PRIOR TO W	12039	
E	CF02	E7600395S		09320F	WINN	10000250		1	0614	SAND POIN	SALMON SEINING/CLOSE		1
E	CF05	E7600393S		1605665	WINN	00900050		1	0601	SAND POIN	FALSE STATEMENT ON L		1
E	CF05	E7600099K		1605665	CARPENTER	00500050	0030	1	0102	KODIAK	NON-RES W/RES LICENS	7276	1
E	CF11	E7600177K		1643140A	BOCKEMUEHL	01000100		3	0504	KODIAK	FISH SHRIMP W/O INTE	11878	1
E	CF11	E7600170K		1643140A	BOCKEMUEHL	01000100		1	0503	KODIAK	FISH KC W/O INT USE	11877	1
E	CF11	E7600275D		1643140A	BOCKEMUEHL	01000100		1	0317	UNALASKA	NO INTERIM USE PERMI	11890	1
E	CF11	E7600467D		1643140A	WINN	01500150		1	0716	UNALASKA	NO INTERIM USE PERMI		1
E	CF11	E7600310K		1643140A	CARPENTER D	01500150		1	0523	KODIAK	NO INTERIM USE PERMI	11955	1
E	CF11	E7600808K		1643140A	SULLIVAN	00500050		1	0922	KARLUK	NO ENTRY PERMIT		1
E	CF11	E7600734K02		1643140A	CARPENTER	SIS		1	0921	KODIAK	COMM FISH W/O INT US		1
E	CF11	E7601118D		2005110A	WINN	01500150	00000000	1	1110	UNALASKA	KING CRAB/ NO L E PE		1
E	CF11	E7601103D		2005110A	WINN	01500150	0000	1	1025	UNALASKA	KING CRAB/ NO L E PE		1
E	CF14	E7600007K		1610240	CARPENTER	02000200		1	1204	KODIAK	TRANSPORTING LIVE CR		1
E	CF20	E7601226D		1605630	WINN	01500150	00000000	1	1209	UNALASKA	NO SHELLFISH POT LIC		1
E	CF20	E7600734K03		1605560	CARPENTER	SIS		1	0921	KODIAK	COMM FISH W/O GERA L		1
E	CF21	E7600734K01		1605510	CARPENTER	SIS		3	0921	KODIAK	COMM FISH W/O VESSEL		1
E	CF21	E7600236K02		1605510	FELBERG	01000025		3	0428	KODIAK	COMM FISH W/O VESSEL	12002	1
E	CF22	E7600236K01		1605480A	FELBERG	01000025		3	0428	KODIAK	COMM FISH W/O LICENS	12001	1
E	CF22	E7600390S		1605480A	LERRING	00600030		1	0607	SAND POIN	COMMERCIAL FISHING/N		1
E	CF22	E7600601K		39110A	BOCHEMUEHL	01000100	0010	1	0811	KALSIN BA	COMM FISH W/O LICENS	11879	1
E	CF22	E7601096D		1605480A	BOCKEMUEHL	01500150		1	1107	UNALASKA	COMM FISH W/O LICENS	11889	1
E	CF22	E7601183D		1605480A	WINN	01000100	00000000	1	1121	UNALASKA	COMM FISH/NO LIC		1
E	CF22	E7601180D		1605480A	WINN	01000100	00000000	1	1118	UNALASKA	COMM FISH/NO LIC		1
E	CF22	E7600508S		39110B	WINN	01000050		1	0622	FALSE PAS	OBTAIN 3 COMM FISHIN		1
E	CF22	E7600507S		05480A	WINN	01000050		1	0618	FALSE PAS	COMM FISH/NO LIC		1
E	CF22	E7600888K30		1605480A	LORRING	01500075		1	0901	KODIAK	COMM FISH W/O LICENS		1
E	CF22	E7600812K		1605480A	CARPENTER	00500050	SIS	1	0925	KODIAK	COMM FISH W/O LICENS		1
E	CF22	E7600813K		1605480A	CARPENTER	00500050	SIS	1	0925	KODIAK	COMM FISH W/O LICENS		1
E	CF22	E7600888K20		1605480A	LORRING	01500075		1	0901	KODIAK	COMM FISH W/O LICENS	12571	1
E	CF25	E7600496K		18332E	BYRD	02500100		1	0721	KODIAK	VESSEL NOT ATTACHED	11904	1
E	CF25	E7600534K		18332E	STARBARD	SIS		3	0716	PORTAGE B	ANCHORED VESSEL WHIL	11903	1
E	CF40	E7600859K		34050C	DEVERS	01500150	0003	1	0928	KODIAK	ILLEGAL POT STORAGE	11965	1
E	CF40	E7601049K		34050C	RHODES	DP		2	1021	KODIAK	IMPROPER STORAGE-CRA		
E	CF41	E7601195K20		34410 2	LORRING	01000100		3	1207	KODIAK	POSS UNDERSIZE KING		1
E	CF41	E7601092D20		34920A	BOCKEMUEHL	10000700		1	1013	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601092D10		34920A	BOCKEMUEHL	10000700		1	1013	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601204 40		34920A	CARPENTER D	DIS			1208	KODIAK	POSSESS UNDERSIZE CR		
E	CF41	E7601195K10		34410 2	LORRING	02000200		3	1207	KODIAK	POSS UNDERSIZE KING		1
E	CF41	E7601092D50		34920A	BOCKEMUEHL	10000700		1	1013	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601092D40		34920A	BOCKEMUEHL	10000700		1	1013	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601092D30		34920A	BOCKEMUEHL	10000700		1	1013	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601204K30		34920A	D CARPENTER	DIS			1208	KODIAK	POSSESS UNDER SIZE C		
E	CF41	E7601217K10		34920A	BOCKEMUEHL	50005000		3	1210	KODIAK	POSSESS SUB-LEGAL CR		1
E	CF41	E7601036D20		34920A	WINN	10000500		3	1016	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601036D10		34920A	WINN	10000500		3	1016	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601205K		34920A	LORRING	50001500		1	1209	KODIAK	POSSESS SUB-LEGAL CR		1
E	CF41	E7600780K		34060A	BOCKEMUEHL	50002500		1	0922	KODIAK	POSSESSION OF UNDERS		1
E	CF41	E7600778K		34060A	BOCHEMUEHL	50002500		1	0921	KODIAK	POSSESSION OF UNDERS		1
E	CF41	E7601037S20		34920A	WINN	10000500		3	1009	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601037S10		34920A	WINN	10000500		3	1009	UNALASKA	SUB-LEGAL KING CRAB		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
E	CF41	E7601036D40		34920A	WINN	10000500		3	1016	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601036D30		34920A	WINN	10000500		3	1016	UNALASKA	UNDERSIZE KING CRAB		1
E	CF41	E7601037S40		34920A	WINN	10000500		3	1009	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601204K10		34920A	CARPENTER	50005000		1	1208	KODIAK	POSSESS UNDER SIZE C		1
E	CF41	E7601037S50		34920A	WINN	10000500		3	1009	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601204K20		34920A	CARPENTER D	DIS			1208	KODIAK	POSSESS UNDERSIZE CR		
E	CF41	E7601037S30		34920A	WINN	10000500		3	1009	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601217K20		34920A	BOCKEMUEHL	10000250		3	1210	KODIAK	POSSESS SUB-LEGAL CR		1
E	CF41	E7601182D10		34920A	WINN	10000700	00000000	1	1120	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601182D40		34920A	WINN	10000700	00000000	1	1120	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601182D20		34920A	WINN	10000700	00000000	1	1120	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF41	E7601182D30		34920A	WINN	10000700	00000000	1	1120	UNALASKA	SUB-LEGAL KING CRAB		1
E	CF42	E7600352K		31020C	BOCKEMUEHL	01500150		1	0521	KODIAK	FAILURE TO REGISTER		1
E	CF42	E7600241K		35030C	CONVERSE	00250025	SIS	1	0501	KODIAK	FAIL TO CHECK OUT OF	11976	1
E	CF42	E7600431K		31020C	BOCKEMUEHL	10000500		1	1001	KODIAK	FAILURE TO REGISTER	11885	1
E	CF42	E7600982K01		31020C	STIMSON	01500050		1	1015	KODIAK	FAIL TO REGISTER VES		1
E	CF42	E76010910		31020C	BOCKEMUEHL	03000300		1	0804	UNALASKA	FAIL TO REGISTER FOR		1
E	CF60	E7600982K02		31030A	STIMSON	01500050		1	1015	KODIAK	NO TANK INSPECTION		1
E	CF60	E7600564S40		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COMM FISHING		1
E	CF60	E7600564S30		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COM FISHING		1
E	CF60	E7600564S10		1605905	WINN	2500		1	0805	SAND POIN	ALIEN/COMM FISHING		1
E	CF60	E7600564 80		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COMM FISHING		1
E	CF60	E7600564S20		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COMM FISHING		1
E	CF60	E7600888K10		16056801	LORRING	01000025		1	0901	KODIAK	EMPLOY UNLICENED FIS		1
E	CF60	E7600821K		16056801	CARPENTER	00500050	SIS	1	0925	KODIAK	EMPLOY UNLICENSED FI		1
E	CF60	E7600820K		31030A	BOCKEMUEHL	0100		1	0521	KODIAK	NO TANK INSPECTION		1
E	CF60	E7600192K		31030A	CARPENTER	DIS DIS			0415	KODIAK	FISH SHRIMP W/O INSP		
E	CF60	E7600264K		31030A	BYRD	00250025		2	0510	KODIAK	NO TANK INSPECTION	11901	1
E	CF60	E7600287K		31030A	BOCKEMUEHL	01000100		1	1001	KODIAK	NO TANK INSPECTION	11886	1
E	CF60	E7601038D		34030B	WINN	05000050		1	1012	UNALASKA	CRABBING/NO TANK INS		1
E	CF60	E7600610K		056801	BOCHEMUEHL	00750075		1	0811	KALSIN BA	EMPLOY UNLICENSED FI	11882	1
E	CF60	E7600600K		056801	BOCHEMUEHL	00750075		1	0811	KALSIN BA	EMPLOY UNLICENSED FI	11880	1
E	CF60	E7600564S70		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COMM FISHING		1
E	CF60	E7600564S60		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COMM FISHING		1
E	CF60	E7600564S50		1605905	WINN	1250		3	0805	SAND PT	ALIEN/COMM FISHING		1
E	CF61	E7601210K		34050B	RHODES	SIS		3	1209	KODIAK	IMPROPERLY MARKED BO		1
E	CF61	E7601211K		34050B	RHODES	01250025		1	1208	KODIAK	IMPROPERLY MARKED BO	11968	1
E	CF61	E7601212K		34050B	RHODES	01250025		1	1209	KODIAK	IMPROPERLY MARKED BO	11966	1
E	CF61	E7601213K		34050B	RHODES			3	1208	KODIAK	IMPROPERLY MARKED BO	11971	1
E	CF61	E7600938K		34050B	RHODES	00500050		3	1008	KODIAK	IMPROPERLY MARKED CR	8630	1
E	CF61	E7601241K		34050B	RHODES			3	1209	KODIAK	IMPROPERLY MARKED BO		1
E	GM02	E7600837K		81320 2	CONVERSE	07500375		3	0930	KODIAK	TAKE BROWN BEAR CLOS	11981	1
E	GM02	E7600642S		81310	LORRING	05000050		3	0712	SAND PT	CARIBOU CLOSED SEASO		1
E	GM02	E7600354K20		813202	CONVERSE	DIS DIS			0603	KODIAK	TAKE BROWN BEAR/CLOS	11977	
E	GM04	E7600111K		1605330A	FELBERG			1	0307	KODIAK	HUNTING W/O LICENSE	7444	1
E	GM08	E7601022K		81015B	CARPENTER	00750075		1	1023	KODIAK	FAIL TO VALIDATE DEE		1
E	GM10	E7601148K03		81 115 2	LORRING	01000050		1	1119	KODIAK	DUCK HUNT/UNPLUGGED		1
E	GM10	E7601148K02		81 175 7	LORRING	0100		1	1119	KODIAK	DUCK HUNTING/NO DUCK		1
E	GM10	E7601148K01		1605330A	LORRING	0100		1	1119	KODIAK	DUCK HUNTING/NO LICE		1
E	GM10	E7601147K03		81 115 2	LORRING	01000050		1	1119	KODIAK	TAKE DUCKS-UNPLUGGED		1
E	GM10	E7601147K02		81 115 7	LORRING	0100		1	1119	KODIAK	DUCK HUNTING NO DUCK		1
E	GM10	E7601147K01		1605330A	LORRING	0100		1	1119	KODIAK	DUCK HUNTING W/O LIC		1
E	GM11	E7601024K		81320 2	RHODES	SIS		3	1022	KODIAK	TAKE BROWN BEAR W/O		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
E	GM11	E7600255K30		8105514	FELBERG	01000100		1	0506	KODIAK	HUNT BEAR W/O PERMIT		1
E	GM11	E7600255K20		81055	FELBERG	01000100		1	0506	KODIAK	HUNT BEAR W/O PERMIT		1
E	GM11	E7600255K10		81055	FELBERG	01000100		1	0506	KODIAK	HUNT BEAR W/O PERMIT		1
E	GM12	E7600280K10		810706	DEVERS	03000300		3	0511	KODIAK	TAKE CARIBOU SAME DA		1
E	GM12	E7600280K20		810706	DEVERS	03000300		3	0511	KODIAK	TAKE CARIBOU SAME DA		1
E	GM14	E7600354K10		5920A	CONVERSE	0250		1	0603	KODIAK	ILLEGAL POSSESSION B	11978	1
E	GM14	E7601184K		81140B	LORRING	0100		3	1202	KODIAK	ILLEGAL POSSESSION O		1
E	SG05	E7601145K		1605420A	CONVERSE	00780078		2	1118	KODIAK	FALSE STATEMENT ON R		
E	SG05	E7601144K		1605420A	CONVERSE	00780078		2	1118	KODIAK	FALSE STATEMENT ON R	11984	
E	SG05	E7601138K		1605420A	CARPENTER	00500050		3	0505	KODIAK	FALSE STATEMENT ON L		1
E	SP01	E7600650K		63030B	SULLIVAN	00500050		1	0827	KODIAK	SPORT FISH CLOSED WA		1
E	SP01	E7600638K02		63030B	LORRING	00500050		1	0821	BUSHKIN R	SPORT FISH CLOSED AR		1
E	SP01	E7600640K		63030B	LORRING	00500050	0010	3	0821	KODIAK	SPORT FISH CLOSED AR		1
E	SP01	E7600702K		63030B	SULLIVAN	01000050		1	0908	KODIAK	SPORT FISH CLOSED WA		1
E	SP01	E7600659K		63030B	SWANSON	00750075			0829	KODIAK	SPORT FISH CLOSED WA		1
E	SP01	E7600654K20		63030C	SWANSON	00500050		3	0828	KODIAK	SPORT FISH CLOSED WA		1
E	SP01	E7600654K10		63030C	SWANSON	00500050		3	0828	KODIAK	SPORT FISH CLOSED WA		1
E	SP03	E7600661K02		42200	SULLIVAN	0025		3	0829	KODIAK	SNAGGING SALMON		1
E	SP03	E7600691K10		42180	SULLIVAN	00750050		1	0907	KODIAK	MOLESTING OF FISH		1
E	SP03	E7600686S		42200	JOHNSTON			1	0820	SAND POIN	SNAGGING		1
E	SP03	E7600680K		42200	BOCKEMUEHL	SIS		1	0905	ROSLYN CR	SNAGGING SALMON	11884	1
E	SP03	E7600696		42200	JOHNSTON			1	0903	SAND POIN	SNAGGING		1
E	SP03	E7600717K		42200	CARPENTER	00250025	SIS	3	0911	KODIAK	SNAGGING SALMON		1
E	SP03	E7600713K02		42200	SWANSON		0010	3	0912	KODIAK	SNAGGING SALMON		1
E	SP03	E7600712K		42200	SWANSON	00250025		3	0910	KODIAK	INTENTIONALLY SNAGGI		1
E	SP03	E7600638K01		42200	LORRING	0025		1	0821	BUSHKIN R	ATTEMPT TO SNAG SALM		1
E	SP03	E7600637K20		42180	CARPENTER	00500050	00100003	3	0821	KODIAK	MOLESTING FISH		1
E	SP03	E7600637K10		42180	CARPENTER	00500050	00100003	3	0821	KODIAK	MOLESTING FISH		1
E	SP03	E7600586K		42200	SULLIVAN	01000025		1	0810	KODIAK	SNAGGING SALMON		1
E	SP03	E7600309K		42200	CARPENTER D	0100		1	0519	KODIAK	SNAGGING FISH	11954	1
E	SP03	E7600876S20		42180	WINN	ESSA		1	0921	SAND POIN	MOLEST SALMON		1
E	SP03	E7600876S10		42020	WINN	ESSA		1	0921	SAND PT	KNIFING SALMON		1
E	SP03	E7600876S30		42020	WINN	ESSA		1	0921	SAND POIN	KNIFING SALMON		1
E	SP03	E7600809K		42180	CARPENTER	00500050	0005	3	0926	KODIAK	MOLESTING SALMON		1
E	SP04	E7600575K		05330A	OLDHAM	00250025		1	0731	KODIAK	SPORT FISHING WITHOU	11980	1
E	SP04	E7600641K		1605330	LORRING	00500025	0010	1	0821	KALSIN BA	SPORT FISH W/O LICEN	11883	1
E	SP04	E7600639K		1605330	LORRING	00500050	0010	1	0821	KODIAK	SPORT FISH NO LICENS		1
E	SP04	E7600638K03		1605330	LORRING	00500025	0010	1	0821	BUSHKIN R	SPORT FISH W/O LICEN		1
E	SP04	E7600645K		1605330	SWANSON	00250025		3	0823	KODIAK	SPORT FISH W/O LICEN		1
E	SP04	E7600713K01		1605330A	SWANSON	00500050		3	0912	KODIAK	SPORTFISH W/O LICENS		1
E	SP04	E7600718K		72010	CARPENTER	00250025	0005	3	0911	KODIAK	FAIL TO SHOW A LICEN		1
E	SP04	E7600732K		1605330	LORRING	00500050		1	0915	AMERICAN	SPORT FISH W/O LICEN		1
E	SP04	E7600704K		1605330	LORRING	00500050		1	0904	MOUTH BUS	SPORT FISH W/O LICEN		1
E	SP04	E7600701S		1605330	WINN	01000025		1	0905	SAND PT	SPORT FISH NO LICENS		1
E	SP04	E7600700S		1605330	WINN	01000025		1	0905	SAND POIN	SPORT FISH NO LICENS		1
E	SP04	E7600699S		1605330	WINN	01000025		1	0905	SAND PT	SPORT FISH NO LICENS		1
E	SP04	E7600661K01		1605330	SULLIVAN	00500050		1	0829	KODIAK	SPORT FISH W/O LICEN		1
E	SP04	E7600660K		1605330A	SULLIVAN	01000050		3	0829	KODIAK	SPORT FISH W/O LICEN		1
E	SP05	E7601158K		1605420A	LORRING	01000025		1	0528	KODIAK	FALSE STATEMENT/RES		1
E	SP05	E7601105K		1605420A	LORRING	00500050	SIS	3	0815	KODIAK	FALSE STATEMENT RES		1
E	SP06	E7600598K		45010	SULLIVAN	00500050	0010	3	0811	KODIAK	OVER LIMIT SALMON		1
E	SP06	E7600627K		630303	CARPENTER D	00250025				KODIAK	OVER LIMIT OF SALMON	11905	1
E	SP07	E7600691K20		42190	SWANSON	01000025		1	0907	KODIAK	WASTE OF SPORT CAUGH		1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
I	CF22	I7610843N20		1605480	PRESTON	00250005	00000000	1	0714	UNALAKLEE	COMM FISH W/O LICENS		1
I	CF22	I7606657F		39110A	BUNSELMEIER	00250025	SIS	1	0724	FAIRBANKS	COMMERCIAL FISHING W		1
I	CF31	I7610843N10		1605540	PRESTON	02500050	00000000	1	0714	NOME	GEAR OWNER NOT PRESE	11855	1
I	CF61	I7607149K		033348	YOUNGREN	00250010		1	0803	KOTZEBUE	COMM FISH UNMARKED N	11801	1
I	FD04	I7602920D		1605330A	HASSEN	0050 SIS		3	0417	DELTA JUN	FUR DEALING W/O LICE		1
I	GM01	I7608052F		813209	BINSCHUS	05000300		1	0904	FAIRBANKS	TAKING MOOSE/CLOSED		1
I	GM01	I7609366D02		81320 9	HASSEN	05000300	0010	1	0815	DELTA JCT	HUNT/CLOSED AREA		1
I	GM02	I7609366D03		81320 9	HASSEN	05000300	0010	1	0815	DELTA JCT	HUNT/CLOSED SEASON		1
I	GM02	I7609366D01		81320 9	HASSEN	05000300	0010	1	0815	DELTA JCT	TAKE ANTERLESS MOOSE		1
I	GM02	I7608453B		813109	FINCH	02000200	00000000	2	0909	BETTLES	TAKING MOOSE/CLOSED		1
I	GM02	I7600890F12		813209	BINSCHUS	02500250	0180	1	0202	FAIRBANKS	TAKE GAME DURING CLO		1
I	GM02	I7600890F11		81310	BINSCHUS	02500250	0180	1	0202	FAIRBANKS	ILLEGAL COW MOOSE KI		1
I	GM02	I7606847T20		813209	ROSCOVIUS	05000300	0030	1	0714	TOK	TAKE MOOSE/CLOSED SE		1
I	GM02	I7602954H21		813209	PAUL	08000400	00140002	1	0321	HEALY	KILL COW MOOSE CLOSE	5728	1
I	GM02	I7602568B		81320	BELL	SIS		1	0303	FAIRBANKS	TAKING MOOSE/CLOSED		1
I	GM02	I7602248F10		81310	HARDY	DIS DIS			0116	FAIRBANKS	TAKING MOOSE IN CLOS		
I	GM02	I7606847T10		813209	ROSCOVIUS	05000300	0030	1	0714	TOK	TAKE MOOSE/CLOSED SE		1
I	GM02	I7601515F20		81310	BUNSELMEIER	10000500	0030	1		HEALY	TAKING GAME CLOSED S		1
I	GM02	I7608733B01		81320 9	FINCH	04000050		1	0917	20 MI S F	TAKING COW MOOSE IN		1
I	GM02	I7608705D		8132011	HASSEN	07500500	0005	1	0810	DELTA JCT	TAKING ILLEGAL SHEEP	11105	1
I	GM02	I7608466T		813209	ROSCOVIUS	10000700		1	0910	TOK	TAKING 2 COW MOOSE		1
I	GM02	I7602954H41		813209	PAUL	08000400	00140002	1	0321	HEALY	TAKE MOOSE CLOSED SE	5726	1
I	GM03	I7609017F		811201	HARDY	00500050		3	1002	FAIRBANKS	SHOOTING FROM ROADWA		1
I	GM03	I7610614N		81120 1	PRESTON	01000025	00000000	1	1120	NOME	SHOOTING FROM HIGHWA	11857	1
I	GM04	I7610548F		1605330A	BINSCHUS		0030	1	1120	FAIRBANKS	TRAPPING WITHOUT A L		1
I	GM04	I7600511D20		1605330A	HASSEN	00250025		1	0122	DELTA JCT	HUNTING W/O LICENSE	0944	1
I	GM04	I7600511D10		1605330A	HASSEN	00250025		1	0122	DELTA JCT	HUNTING W/O LICENSE	0943	1
I	GM04	I7600899N		1605330A	PRESTON	SIS		1	1213	NOME	HUNTING W/O LICENSE		1
I	GM04	I7608467T		1605330A	ROSCOVIUS		0090	1	0906	TOK	TAKE MOOSE W/O LICEN		1
I	GM04	I7608733B02		1605330	FINCH	0050		1	0917	20 MI SO	HUNTINGW/O A LICENSE		1
I	GM04	I7604189F		1605330A	PURDY	02000050		1	0526	FAIRBANKS	HUNTING W/O VALID LI	11577	1
I	GM04	I7602954H22		1605330	PAUL	02000100		1	0321	HEALY	HUNTING W/O LICENSE	5728	1
I	GM05	I7611164F		1605420A	BINSCHUS	0100 SIS	00000000	1	0909	FAIRBANKS	FALSE STATEMENT/RES		1
I	GM05	I7609664N		1605420A	PRESTON	01000050		1	0713	NOME	FALSE STATEMENT/RESI		1
I	GM06	I7606522F		6903010	BUNSELMEIER	0250		2	0725	FAIRBANKS	OVERLIMIT OF GRAYLIN	10858	1
I	GM07	I7610218K		81216	PAUL	DIS		2	1012	KOTZEBUE	FAIL TO RETRIEVE BIG	12559	
I	GM07	I7610490K10		1630010A	YOUNGREN	03000150		3	0905	KOTZEBUE	WASTE OF WILD FOOD A		1
I	GM07	I7610490K20		1630010A	YOUNGREN	03000150	00000000	3	0905	KOTZEBUE	WASTE OF WILD FOOD A		1
I	GM08	I7610254C		81105A	FELBERG	00250025		1	0905	HEALY	FAIL TO CARRY HARVES	12022	1
I	GM08	I7609980C		81015B	FELBERG	00200020		1	0909	HEALY	FAILURE OT VALIDATE	10863	1
I	GM08	I7608128F		81015B	BUNSELMEIER	00500050		1	0902	FAIRBANKS	FAIL TO VALIDATE HAR	10861	1
I	GM08	I7608736D		581015B	RANKIN	SIS		3	0915	SHAW CREE	FAIL TO VALIDATE HAR	10830	1
I	GM08	I7608868F		81015A	BINSCHUS	02500050		3	0925	FAIRBANKS	FAIL TO VALIDATE HAR		1
I	GM08	I7608702D		81015B	HASSEN	00500050		1	0816	200 DELTA	FAIL TO VALIDATE HAR	11106	1
I	GM08	I7608869F		81015A	BINSCHUS	02500050		3	0925	FAIRBANKS	FAILURE TO VALIDATE		1
I	GM10	I7609358D		81115 2	HASSEN	00250025		3	0924	DELTA JCT	WATERFOWL/UNPLUGGED	11108	1
I	GM13	I7602982F		811806	BUNSELMEIER	0250		3	0419	FAIRBANKS	POSS OF UNSEALED BRO		1
I	GM14	I7602954H42		81140	PAUL	04000200		1	0321	HEALY	POSSESSION/TRANSP IL	5726	1
I	GM14	I7602954H43		81140	PAUL	04000200		1	0321	HEALY	TRANSPORTATION OF IL	5726	1
I	GM14	I7602954H31		81140B	PAUL	08000400	0014	1	0321	HEALY	POSS/TRANS OF ILLEGA	5727	1
I	GM14	I7601515F10		811406	BUNSELMEIER	05000100	0005	1		HEALY	POSSESSION ILLEGALLY		1
I	GM14	I7601515F30		811406	BUNSELMEIER	10000500	0030	1		HEALY	TRANSP OF ILLEGAL GA		1
I	GM14	I7609104C		81140B	FELBERG	03000100		3	0819	HEALY	ILLEGAL POSSESSION O	12021	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
I	GM14	I7608214D		81145	HASSEN	01000100		1	0821	DELTA JCT	TRANSFER OF POSS OF	11107	1
I	GM14	I7607421D		81140B	RANKIN	04000200		2	0813	DELTA JCT	ILLEGAL POSSESSION O		1
I	GM14	I7609599C		81225	FELBERG	05000025		1	0905	CANTWELL	TRANSPORTATION/CLOSE	12024	1
I	GM14	I7605366C		81140B	FELBERG	05000250	0030	3	0623	FAIRBANKS	POSSESSION OF ILLEGA		1
I	GM14	I7605188F20		81140B	BUNSELMEIER	05000300	0030	1	0622	FAIRBANKS	POSSESSION OF ILLEGA	10854	1
I	GM14	I7605188F10		81140B	BUNSELMEIER	05000300	0030	1	0622	FAIRBANKS	POSSESSION OF ILLEGA	10852	1
I	GM14	I7609600C		81225	FELBERG	05000025		1	0905	CANTWELL	TRANSPORTATION/CONTR	12-025	1
I	GM14	I7600890F21		581140B	BINSCHUS	05000500		2	0204	FAIRBANKS	POSSESSION OF ILLEGA		1
I	GM14	I7602954H11		81140B	PAUL	08000400	0014	1	0321	HEALY	POSS/TRANS OF ILLEGA	5729	1
I	GM14	I7602248F20		81140	HARDY	DIS DIS			0228	FAIRBANKS	ILLEGAL POSSESSION O		
I	GM14	I7607981C		81227	FELBERG	DIS			0815	HEALY	GAME TRANSPORTATION	12017	
I	GM14	I7607980C		81227	FELBERG				0815	HEALY	GAME TRANSPORTATION	12018	
I	GM14	I7607632F		81140B	BINSCHUS	05000050	SIS	1	0819	OLDMAN CA	POSSESSION OF ILLEGA		1
I	GM14	I7610729F		84110	BUNSELMEIER	SIS0000	00000000	1	1127	FAIRBANKS	POSS OF UNSEALED BEA	10868	1
I	GM16	I7607887F		81320 11	HARDY			1	0822	BETTLES	TAKE SHEEP WITH LESS		1
I	GM16	I7607420D		8132011	RANKIN	04000200		3	0813	DELTA JCT	TAKING A RAM WITH LE		1
I	GM60	I7606031T		81050	HASSEN	03000100		1	0702	TOK	POSSES HAWKS W/O ADF	11103	1
I	GM60	I7609626N		81.130	PRESTON			2	0611	NOME	POSSESSION OF LIVE G		
I	SG05	I7611353F		1605420A	BINSCHUS	01500050	00000000	3	0516	FAIRBANKS	FALSE STATEMENT/RES		1
I	SG05	I7611350F		1605420A	BINSCHUS	02000200	00100005	1	0508	FAIRBANKS	FALSE STATE/RES LIC		1
I	SG05	I7608694F		1605420	BUNSELMEIER	DIS		2	0410	FAIRBANKS	FALSE STATEMENT ON R		
I	SG05	I7609663N		1605420A	PRESTON	02050100		1	0410	NOME	FALSE STATEMENT/RESI		1
I	SG05	I7604862D		1605420	HASSEN	00750SIS		3	0313	DELTA JUN	FALSE STATEMENT TO O		1
I	SG05	I7609115D		1605420	RANKIN	01500050		1	0726	DELTA JCT	FALSE STATEMENT/RESI		1
I	SG05	I7611352F		1605420A	BINSCHUS	01500150	00050000	3	0824	FAIRBANKS	FALSE STATEMENT/RES		1
I	SG05	I7600698F		1605420A	HARDY	00500050		1	0801	FAIRBANKS	FALSE STATEMENT/RES	2025	1
I	SG05	I7609845F		05420A	OSTERHOUDT	01000025		3	0607	FAIRBANKS	FALSE STATEMENT/RES		1
I	SG05	I7602387F		1605420A	PURDY	00500050		1	0211	FAIRBANKS	FALSE STATEMENT/RESI		1
I	SG05	I7602427F		1605420A	PURDY	DIS		2	0331	FAIRBANKS	FALSE STATEMENT/RESI		
I	SG05	I7603197F		1605420A	PURDY	00750075		2	0205	FAIRBANKS	FALSE STATEMENT/RESI		1
I	SP01	I7606358D		510301B	RANKIN	01000100		1	0711	DELTA	FISHING FOR SALMON/C	10829	1
I	SP04	I7605701F		1605330A	BUNSELMEIER	00250025		1	0704	8 CHENA P	FISHING WITHOUT A LI	10855	1
I	SP04	I7606359D		1605330A	RANKIN	00500050		3	0711	DELTA	FISHING WITHOUT LICE	10828	1
I	SP04	I7603599F		1605330A		DIS		2	0509		FISHING WITHOUT A LI	5258	
I	SP04	I7604853F10		1605330A	BINSCHUS	00750025		1	0612	FAIRBANKS	SPORT FISHING W/O VA	1114	1
I	SP04	I7604123F		1605330	BINSCHUS	01500035		1	0522	FAIRBANKS	FISHING WITHOUT A LI	1113	1
I	SP04	I7604111F		1605330A	BINSCHUS	00750025		1	0522	FAIRBANKS	FISHING W/O LICENSE	1112	1
I	SP04	I7604853F20		1605330A	BINSCHUS	00750025		1	0612	FAIRBANKS	SPORT FISHING W/O VA	1115	1
I	SP04	I7603854F		1605330	PURDY	SIS		1	0516	FAIRBANKS	SPORT FISHING W/O LI		1
I	SP04	I7603684F		1605330A	PURDY	01000025		1	0511	FAIRBANKS	SPORT FISHING WITHOU	11576	1
I	SP04	I7605698F		1605330A	BINSCHUS	00250025		3	0704	FAIRBANKS	SPORT FISHING W/O VA	1121	1
I	SP04	I7605697F		1605330A	BINSCHUS	0020		1	0704	FAIRBANKS	SPORT FISHING W/O VA	1120	1
I	SP04	I7603595F		1605330A		01000100		1	0508		FISHING WITHOUT A LI	5255	1
I	SP04	I7603594F		1605330A		01000100		1	0508		FISHING WITHOUT A LI	5256	1
I	SP04	I7603593F		1605330A		DIS			0508		FISHING WITHOUT A LI	5254	
I	SP04	I7603360F		1605330	BINSCHUS	00250025		1	0502	FAIRBANKS	FISHING W/O LICENSE	1111	1
I	SP04	I7607966T		1605330	ROSCOVIUS	00250025		1	0804	TOK	SPORT FISHING W/O A		1
I	SP04	I7607967T		1605330	ROSCOVIUS	00250025		1	0804	TOK	SPORT FISHING W/O LI		1
I	SP04	I7606843D		1605330A	HASSEN	00500050		3	0620	DELTA	FISHING WITHOUT A LI	11101	1
I	SP04	I7606842D		1605330A	HASSEN	00500050		1	0620	DELTA	FISHING WITHOUT A LI	11102	1
I	SP04	I7606863D		1605330A	HASSEN	00500050		3	0710	DELTA	FISHING WITHOUT A LI	U1104	1
I	SP04	I7601767D		1605330A	HASSEN	00500025		1	0306	DELTA	SPORT FISHING W/O LI	0945	1
I	SP04	I7601853D		1605330A	HASSEN	00500025		1	0307	DELTA	SPORT FISHING W/O LI	0947	1

DETAC	CDE	CASE	ORGSTAT	CONSTAT	SNDBY	FINE	JAIL	PLEA	VIOLDAT	LOC	OFCHG	USC	VERD
I	SP04	I7601852D		1605330A	HASSEN	00500050		1	0307	DELTA JCT	SPORT FISHING W/O LI	0946	1
I	SP04	I7609274F		1605330A	PURDY	01500050		1	1010	FAIRBANKS	SPORT FISHING W/O LI	11580	1
I	SP04	I7600831F		1605330	BINSCHUS	00750030		1	0131	BIRCH LK	SPORT FISHING WITHOU	1110	1
I	SP04	I7608345F		1605330A	HEMMEN	03000100		3	0905	FAIRBANKS	SPORT FISHING W/O LI		1
I	SP04	I7600586F		1605330A	BUNSELMEIER	00200020		1	0124	FAIRBANKS	SPORT FISHING W/O LI	2024	1
I	SP04	I7600641F		1605330	BINSCHUS	00200020		1	0125	FAIRBANKS	SPORT FISHING W/O LI	1109	1
I	SP05	I7602846F02		1605420A	BINSCHUS	02500250	0010	3	0318	FAIRBANKS	FALSE STATEMENT FOR		1
I	SP05	I7602846F01		1605420A	BINSCHUS	02500250	00100010	3	0414	FAIRBANKS	FALSE STATEMENT FOR		1
I	SP05	I7601682F		1605420A	BINSCHUS	02500250		1	0518	FAIRBANKS	FALSE STATEMENT/RES		1
I	SP05	I7601891F		1605420A	BINSCHUS	03500350		1	0531	FAIRBANKS	FALSE STATEMENT/RES		1
I	SP05	I7609802N		1605420A	PRESTON	00200020		1	0714	NOME	FALSE STATEMENT/RESI		1
I	SP05	I7609801N		1605420A	PRESTON	00200020		1	0712	NOME	FALSE STATEMENT/RESI		1
I	SP05	I7609665N		1605420A	PRESTON	00200020		1	0710	NOME	FALSE STATEMENT/RESI		1
I	SP05	I7603748F		1605420A	PURDY	SIS		1	0513	FAIRBANKS	FALSE STATEMENT TO O		1
I	SP05	I7605361F		1605420A	PURDY	02500250		3	0408	FAIRBANKS	FALSE STATEMENT FOR		1
I	SP05	I7605267F		1605420A	BUNSELMEIER	02000200	0010	1	0603	FAIRBANKS	FALSE STATEMENT FOR		1
I	SP06	I7603363F		690301D	BUNSELMEIER	0100		3	0503	FAIRBANKS	POSSESSION OF OVERLI	5831	1
I	SP06	I7603362F		690301D	BUNSELMEIER	0100		3	0503	FAIRBANKS	POSSESSION OF OVERLI	5829	1
I	SP06	I7603361F		690301D	BELL	0100		3	0503	FAIRBANKS	POSSESSION OF OVERLI	5830	1
I	SP06	I7603346T		69030D		05000250		3	0417		OVERLIMIT OF GRAYLIN	8626	1
I	SP06	I7610158F		69030B1	HEMMEN	0200		3	1107	FAIRBANKS	OVERLIMIT OF SILVER		1
I	SP06	I7610160F		69030B1	PURDY	0200		3	1107	FAIRBANKS	OVERLIMIT OF SILVER	11581	1
I	SP06	I7610159F		69030B1	HEMMEN	0180		3	1107	FAIRBANKS	OVERLIMIT OF SILVER		1
I	SP14	I7606374F		60030A	PURDY	03000050		1	0721	FAIRBANKS	POSSESSION OF ILLEGA		1
I	SP23	I7609627N		03 990G3	PRESTON	02500025		3	0717	NOME	MORE THAN 1/2 STREAM		1
I	SP23	I7606807K		03990B	YOUNGREN	00100010		1	0715	KOTZEBUE	SUBSISTANCE FISH/CLO	5772	1
I	SP23	I7607154K		03990B	YOUNGREN	00100010		1	0715	KOTZEBUE	SUB FISH/CLOSED PERI	5772	1
I	SP31	I7600585F		542020	HARDY	0010 SIS		1	0124	FAIRBANKS	NOT CLOSELY ATTENDIN	2023	1

1,565 RECORDS PRINTED

South Side Alaska Peninsula Catch

	Pink	Chum
1960	1,510,795	1,071,493
1961	1,727,818	748,595
1962	1,961,018	823,078
1963	2,303,085	464,060
1964	2,721,991	750,950
1965	2,858,528	537,500
1966	302,344	485,176
1967	77,758	238,735
1968	1,284,917	325,281
1969	1,219,446	389,249
1970	1,739,279	993,383
1971	1,445,031	1,365,957
1972	78,304	731,970
1973	58,051	292,943
1974	100,626	71,834
1975	60,642	130,750

STATE
of ALASKA

TO: Lt. Clint Converse
Div. of Fish and Wildlife Protection
Department of Public Safety
Kodiak

DATE: February 16, 1977

FROM: Paul C. Pedersen
Regional Finfish Biologist
Division of Commercial Fisheries
Department of Fish and Game, Kodiak

SUBJECT: Westward Region Enforcement Program

In my opinion, the salmon enforcement program in the Westward Region for the past two years has been as good as operating funds would allow. There has been a very close cooperation between our two agencies, and when possible, you have assigned people to specific areas in particular need of protection.

Regardless of how much money or how many people were at your disposal, it would not be possible to have someone watching all areas at all times. It therefore seems that the only way to have any effectiveness at all is for you to continue the present method of placing crews unannounced in key areas.

At public meetings we continually hear from fishermen about the need for more and better protection. If House Bill No. 111 is allowed to become law, it will be to the detriment of all salmon fishermen. There would be an increase in the loss of fish from closed areas, and consequently more and larger closures will have to be made, as complete closures are the only positive method of protection.

I fail to see the motives for introduction of such a bill, but it points out the fact that the public has not been properly educated in regards to our management and enforcement programs. The courts must also be convinced of the seriousness of fishery violations. Your effectiveness has seriously been hampered by leniency on their part.

cc: Jack Lechner
Captain Frank Sharp

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME

JAY S. HAMMOND, GOVERNOR

BOX 669 — CORDOVA 99574

February 18, 1977

Captain Frank Sharp
P. O. Box 6188 Annex
Anchorage, Alaska 99502

Dear Frank:

This is to comment on the recent Legislative Bill to do away with stakeouts in the commercial fishery enforcement program.

I have been managing the Prince William Sound commercial fishery for the past 17 years and have had the opportunity to observe about every kind of enforcement program used. It is my opinion that the stakeout method of enforcement is the single most valuable deterrent to illegal fishing of any method ever employed in this area. Also, the cost of such a program is much less than other effective methods such as stream guards, which, require many more personnel and leave many spawning streams unguarded. The psychological effect of a few stakeout crews scattered around Prince William Sound will do more to save spawning stocks of salmon than twice as many personnel employed on boats or as stream guards.

I hope you are successful in helping to defeat this Bill.

Sincerely,

Ralph B. Pirtle
Area Management Biologist

VIOLATION CODE	COMPLAINT SIGNED BY	VIOLATION LOCATION	VIOLATION DATE	VIOLATION TIME	CITED BY	CITED DATE	SEIZED FG	COP	PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		B-76-03228-C		CF20 - COMM FISH W/O TROLL GEAR LICENSE						8080							
1605550	SHELTON	CRAIG	8/03	4:30P	SHELTON	8/03/76	Y	N	GUILTY		8/06/76	GUILTY	200	25			
574- -9482	HYDABURG			MALE	E-BR H-GR	9/01/14	175	5-7		RES							
		B-76-03222-C 01		CF25 - COMM FISH W/MORE THAN 4 LINES						8089							
39270A	JOHNSON	HYDABURG	7/28	6:10A	JOHNSON	7/28/76	N	Y	NOLO		8/25/76	GUILTY	200	25			
574-10-1246	HYDABURG			MALE	E-BR H-BR	8/09/3-	190	5-10		RES							
		B-76-03075-J		CF01 - C/F CLOSED AREA						7884							
	S CAIN	JUNEAU	7/03	6:15P	CAIN	7/03/76	Y	N	GUILTY		7/07/76	GUILTY	250	150			
402-42-6258	JUNEAU			MALE	E-BR H-BR	6/05/33	160	5-11		RES							
		B-76-02274-T 02		CF32 - FAIL TO SUBMIT INFO FISH TICKET						11349							
1605690	BOUTANG	ELFIN COV	9/28		BOUTANG	7/28/76	N	N	NOLO		10/01/76	GUILTY	500	100			
000-00-0000	ELFIN COVE																
		B-76-03447-T		CF11 - CF W/O ENTRY PERMIT													
5100A	BOUTANG	SITKA	10/20		BOUTANG	10/20/76	N	N	GUILTY		11/10/76	GUILTY	300	100			
167-34-0318	PORT ALEXANDE			MALE	E-BO H-BL	8/16/42	150	5-9		RES							
		B-76-02274-T 01		CF32 - FAIL TO SUBMIT INFO ON FISH TICKET						11350							
1605690	BOUTANG	ELFIN COV	5/28		BOUTANG	7/28/76	N	N	NOLO		10/01/76	GUILTY	500	100			
000-00-0000	ELFIN COVE																
		B-76-03478-K		CF02 - C/F HALIBUT CLOSED SEASON						2085							
39390	JOHNSON K	CRAIG	5/08	2:30P	JOHNSON K	7/02/76	N	N	GUILTY		7/09/76	GUILTY	500	200			
572-56-1115	CRAIG			MALE	E-BR H-BR	9/14/42	160	5-8		RES							
		B-76-03513-W 01		CF20 - COMM FISH UNLIC GILLNET						11201							
1605570	LAKE	WRANGELL	7/20	9:30A	LAKE	7/20/76		Y	NOLO		7/23/76	GUILTY	100	25			
537-50-0405	WRANGELL			MALE	E-BR H-BR	5/16/50	200	5-9		N-RES							
		B-76-03513-W 02		CF21 - COMM FISH UNLIC VESSEL						11202							
1605510	LAKE	WRANGELL	7/20	9:30A	LAKE	7/20/76	N	Y	NOLO		7/23/76	GUILTY	100	25			
537-50-0405	WRANGELL			MALE	E-BR H-BR	5/16/50	200	5-9		N-RES							
		B-76-02261-T 03		CF11 - CF W/O ENTRY PERMIT						11196							
5100A	BOUTANG	DEER HARB	6/29	7:15P	BOUTANG	7/29/76	N	N	GUILTY		8/03/76	GUILTY	1000	1000			
540-66-4076	ELFIN COVE			FEMALE	E-BO H-BL	3/29/52	160	5-6		RES							
		B-76-02261-T 02		CF20 - CF W/O GEAR LICENSE						11198							
1605550	BOUTANG	DEER HARB	6/29	7:15P	BOUTANG	6/29/76	N	N	GUILTY		8/03/76	GUILTY	750	250			
540-66-4076	ELFIN COVE			FEMALE	E-BO H-BL	3/29/52	160	5-6		RES							
		B-76-02261-T 01		CF21 - CF W/O VESSEL LICENSE						11197							
1605510	BOUTANG	DEER HBR	6/29	7:15P	BOUTANG	6/29/76	N	N	GUILTY		7/01/76	GUILTY	750	250			
540-66-4076	ELFIN COVE			FEMALE	E-BO H-BL	3/29/52	160	5-6		RES							
		B-76-02259-T		CF16 - UNDERSIZE HALIBUT						11189							
39390	BOUTANG	ICY STRAI	7/02	10:55A	BOUTANG	7/02/76	Y	N	GUILTY		7/06/76	GUILTY	500	500			
562-64-1525	JUNEAU			W/F	E-BR H-BR	6/11/40	180	5-1		RES							

VIOLATION CODE	COMPLAINT SIGNED BY	VIOLATION LOCATION	VIOLATION DATE	VIOLATION TIME	CITED BY	CITED DATE	SEIZED FG	COP	PLEA	USC NO BAIL	TRAIL IN DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		B-76-03703-K		CF20 - C/F W/O GEAR LICENSE													
1605560 JOHNSON		KETCHIKAN	9/02	5:15P	JOHNSON		N	N	GUILTY	100	9/21/76	GUILTY	150	75			
574-09-4736 KETCHIKAN				MALE	E-BR H-BK	7/22/31 200 5-10			RES								
		B-76-02258-T		CF16 - UNDERSIZE HALIBUT						11192							
39390 BOUTANG		KLOKACHEF	6/29	1:30P	BOUTANG	6/29/76	Y	N	GUILTY		7/06/76	GUILTY	600	300			
574-14-6716 SITKA				MALE	E-BR H-BK	4/06/45 180 5-7			RES								
		B-76-02256-T		CF22 - COMM FISH W/O LICENSE						11179							
1605480A BOUTANG		TENAKEE S	5/31	5:00P	BOUTANG	6/31/76	N	N	GUILTY		6/24/76	GUILTY	300	150			
531-42-6212 TENAKEE SP				MALE	E-BU H-BR	8/05/43 120 5-7			RES								
		B-76-02230-T 02		CF20 - COMM FISH W/O GEAR LIC						2153							
1605550A BOUTANG		PELICAN	5/27	2:00P	BOUTANG	7/01/76	N	N	GUILTY		7/01/76	GUILTY	750	250			
537-46-6525 ELFIN COVE				MALE	E-BR H-BR	6/12/31 180 6			RES								
		B-76-02230-T 01		CF21 - COMM FISH W/O V-SSEL LIC						2152							
1605510 BOUTANG		PELICAN	5/27	2:00P	BOUTANG	7/01/76	N	N	GUILTY		7/01/76	GUILTY	750	250			
537-46-6525 ELFIN COVE				MALE	E-BR H-BR	6/12/31 180 6			RES								
		B-76-02229-T 02		CF16 - UNDER SIZE SALMON						2151							
33392 BOUTANG		PELICAN	5/27	1:15P	BOUTANG	5/27/76	N	N	GUILTY		5/28/76	GUILTY	400	200			
504-07-2072 ELFIN COVE				MALE	E-HZ H-BD	11/06/11 140 5-7			RES								
		B-76-02229-T 01		CF07 - WASTE SALMON						2100							
1605821 BOUTANG		PELICAN A	5/27	1:15P	BOUTANG	5/27/76	N	N	GUILTY		5/28/76	GUILTY	200	100			
504-07-2072 ELFIN COVE				MALE	E-HZ H-BD	11/06/11 140 5-7			RES								
		B-76-02099-H		CF02 - C/F CLOSED PERIOD													
1605060 RUDDELL		LETNIKOF	9/22	12:07P	RUDDELL	10/11/76	N	N	GUILTY		10/11/76	GUILTY	250	250			
538-05-3890 JUNEAU				MALE	E-BU H-GR	1/06/16 150 5-8			RES								
		B-76-02098-H		CF25 - COMM FISH W/OVER LENGTH NET						11167							
5 RUDDELL		HAINES	9/13	4:00P	RUDDELL				GUILTY		9/23/76	GUILTY	SIS				
535-16-5655 HAINES				MALE	E-BR H-BK	12/10/22 170 5-10			RES								
		B-76-02091-H		CF02 - COMM FISH CLOSED PERIOD						11170							
1605060 RUDDELL		HAINES	9/22	12:14P	RUDDELL	9/27/76	N	N	NOLO		9/29/76	GUILTY	200	200	SIS		
574-22-7260 JUNEAU				MALE	E-BU H-BR	12/02/57 160 5-8			RES								
		B-76-02090-H		CF02 - C/F CLOSED PERIOD						11169							
1605060 RUDDELL		HAINES	9/22	12:13P	RUDDELL	9/27/76	N	N	GUILTY		9/29/76	GUILTY	200	200	SIS		
532-28-5544 OAK HARBOR	WA			MALE	E-BU H-GR	6/16/27 165 6			N-RES								
		B-76-02089-H		CF01 - C/F CLOSED WATERS						11173							
1605060 DEANER		HAINES	9/27	6:04P	DEALER	9/27/76	N	N			9/29/76	GUILTY	300	200			
470-38-1028 HAINES				MALE	E-BR H-BR	9/15/34 150 6-11			RES								
		B-76-02088-H		CF01 - C/F CLOSED WATERS						11172							
1605060 DEANER		HAINES	9/27	6:04P	DEALER	9/27/76	N	N	NOLO		10/15/76	GUILTY	300	200			
532-40-0129 WRANGELL				MALE	E-BR H-BR	12/19/41 160 5-9			RES								

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DA	SEIZED EG	FOP	PLEA	USC NO BAIL	TRAIL IN DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
333501P	RUDDELL	B-76-02082-H		CF01 - COMM FISH CLOSED WATER						11161							
518-07-3068	HAINES	HAINES	7/12	11:30	RUDDELL	7/12/76	N	N	NOLO		7/15/76	GUILTY	225	225			
		MALE			E-BR H-BK	5/21/17	150	5-10	RES								
333501P	RUDDELL	B-76-02081-H		CF01 - COMM FISH CLOSED WATER						11162							
538-44-7402	HAINES	HAINES	7/12	11:30	RUDDELL	7/12/76	N	N	NOLO		7/15/76	GUILTY	150	150			
		MALE			E-BR H-BK	1/11/47	155	5-8	RES								
333501P	RUDDELL	B-76-02080-H		CF01 - COMM FISH CLOSED WATER						11163							
574-14-0861	HAINES	HAINES	7/12	11:30P	RUDDELL	7/12/76	N	N	NOLO		7/15/76	GUILTY	425	425			
		MALE			E-BR H-BK	8/21/41	160	5-10	RES								
2005100A	BOUTANG	B-76-01950-T		CF11 - NO INT-USE PERMIT						11246							
574-10-8163	SITKA	SITKA	5/09	11:30A	BOUTANG	5/09/76	N	N	GUILTY		5/14/76	GUILTY	300	150			
		MALE			E-BR H-BK	11/19/39	220	6	RES								
1605480A	BOUTANG	B-76-01943-T		CF22 - COMM FISH W/O LICENSE						11245							
506-80-7078	SITKA	SITKA	5/09	6:00P	BOUTANG	5/09/76	N	N	GUILTY		5/10/76	GUILTY	750	250	2		
		MALE			E-BR H-BR	8/02/55	170	6	RES								
1605510	BOUTANG	B-76-01940-T 03		CF21 - COMM FISH W/O VESSEL LIC						11237							
574-09-0993	SITKA	SITKA	5/02	1:30P	BOUTANG	5/17/76	N	N	NOLO		5/17/76	GUILTY	125	125			
		MALE			E-BR H-BK	7/09/27	160	5-10	RES								
1605540	RUDDELL	B-76-00202-H 02		CF31 - DID NOT PERSONALLY ASSIST OP GEAR						11153							
574-30-5781	HAINES	HAINES	6/29	6:00P	RUDDELL	6/29/76	Y	N	NOLO		7/02/76	GUILTY	1000	500			
		MALE			E-BR H-BR	5/28/56	170	5-11	RES								
1605670C	RUDDELL	B-76-00202-H 01		CF31 - CAUSED GEAR TO BE OP ILLEGALLY						11154							
574-30-5781	HAINES	HAINES	6/29	6:00P	RUDDELL	6/30/76	Y	N	NOLO		7/02/76	GUILTY	1000	500			
		MALE			E-BR H-BR	6/28/56	170	5-11	RES								
3333165	RUDDELL	B-76-00201-H		CF25 - OVERLENGTH DRIFT GILLNET						11156							
535-14-9802	HAINES	HAINES	6/20	11:00A	RUDDELL	6/30/76	N	N	GUILTY		7/02/76	GUILTY	1025	775			
		MALE			E-BR H-BK	4/11/24	203	6-1	RES								
3032028	VALENTINE	B-76-00172-Y		CF02 - COMM FISH CLOSED PERIOD													
574-12-3329	YAKUTAT	YAKUTAT	8/30	10:30A	VALENTINE	8/30/76	N	N	GUILTY		9/07/76	GUILTY	1000	500			
		MALE			E-BL H-BK	6/04/40	200	5-10	RES								
3032028	VALENTINE	B-76-00171-Y		CF02 - COMM FISH CLOSED PERIOD													
000-00-0000		YAKUTAT	8/30	10:20A	VALENTINE	8/30/76	N	N	GUILTY		9/07/76	GUILTY	SIS				
		MALE							RES								
3032028	VALENTINE	B-76-00170-Y		CF02 - COMM FISH CLOSED PERIOD													
574-22-3493	YAKUTAT	YAKUTAT	8/30	10:30A	VALENTINE	8/30/76	N	N	GUILTY		9/07/76	GUILTY	1000	250			
		MALE			E-BR H-BK	5/15/52	150	5-8	RES								
3032028	VALENTINE	B-76-00169-Y		CF02 - COMM FISH CLOSED PERIOD													
574-12-5844	ANCHORAGE	YAKUTAT	8/30	10:30A	VALENTINE	8/30/76	N	N	GUILTY		9/07/76	GUILTY	1000	500			
		MALE			E-BR H-BK	10/07/76	140	5-6	RES								

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG	POP	PLEA	USC NO BAIL	TRAIL IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		B-76-00167-Y			CF01 - BLOCK SALMON STREAM W/NET					7183							
30331 GARRISON		YAKUTAT	7/13	1:00P	GARRISON	7/13/76	Y		GUILTY		7/23/76	GUILTY	50	25			
574-01-1245 YAKUTAT					FEMALE E-BR H-BR 12/28/10 135 5-1				RES								
		B-75-12051-P			CF01 - COMM TROLL CLOSED WATERS												
B SHORT		PETERSBUR	9/12	3:00P	SHORT	10/09/75	N	N			10/28/75			DIS			
557-14-7136 PETERSBURG					MALE E-BR H-BR 6/25/21 160 5-9				RES								
		C-75-11161			CF22 - NC COMM FISH LICENSE					8920							
1605480			7/10		HENSLEE	7/10/75			GUILTY		7/14/75	GUILTY	25				
574-24-2329 EEK					MALE E-BR H-BK 7/14/53 140 5-4				RES								
		B-75-11721	02		CF25 - CF WITH MONOFILAMENT GEAR												
39250C RUDDELL		HAINES	9/08	10:00	RUDDELL	9/08/75	Y	Y	N GLTY		10/01/75			DIS			
574-14-8469 JUNEAU					MALE E-BR H-BR 4/05/44 155 5-9				RES								
		B-75-11721	01		CF25 - COMM FISH MORE THAN 1 SET OF GEAR												
39240 RUDDELL		HAINES	9/08	10:00A	RUDDELL	9/08/75	Y	Y	N GLTY		10/01/75			DIS			
574-14-8469 JUNEAU					MALE E-BR H-BR 4/05/44 155 5-9				RES								
		B-75-11648	60		CF01 - COMM FISH CLOSED WATER												
1605060			8/18	3:50P	KAUFMAN	8/18/75			N GLTY		10/31/75			WRNT			
316-42-9831 WRANGELL					MALE E-BR H-BR 12/28/42 175 6-2				RES								
		B-75-11648	50		CF01 - COMM FISH CLOSED WATER												
1605060			8/18	3:50P	KAUFMAN	8/18/75			N GLTY		10/31/75	GUILTY	500	250			
574-30-5066 WRANGELL					MALE E-BR H-BR 6/02/57 150 5-7				RES								
		B-75-11648	40		CF01 - COMM FISH CLOSED WATER												
			8/18	3:50P	KAUFMAN	8/18/75	Y	N	GLTY		10/31/75	GUILTY	2000	1000			
574-01-1662 WRANGELL					MALE E-BR H-BR 3/01/11 170 6				RES								
		B-75-11648	30		CF01 - COMM FISH CLOSED WATER												
1605060			8/18	3:50P	KAUFMAN	8/18/75			N GLTY		10/31/75	GUILTY	500	250			
574-14-6112 WRANGELL					MALE E-BR H-BR 1/26/41 200 5-9												
		B-75-11648	20		CF01 - COMM FISH CLOSED WATER												
1605060			8/18	3:50P	KAUFMAN	8/18/75			N GLTY		10/31/75	GUILTY	500	250			
534-18-2437 WRANGELL					FEMALE E-BR H-BL 5/25/21 125 5-1				RES								
		B-75-11648	10		CF01 - COMM FISH CLOSED WATER												
1605060			8/18	3:50P	KAUFMAN	8/18/75			N GLTY		10/31/75	GUILTY	500	250			
574-18-5046 WRANGELL									RES								
		B-75-10920-K	01		CF22 - C/F W/C LICENSE					N/A							
1605480A SEIBEL		KETCHIKAN	7/02		SEIBEL	7/21/75	N	N	N GLTY		9/04/75			DIS			
539-48-8228 BELLINGHAM		WA			MALE E-BR H-BR 3/06/51 150 5-7				N-RES								
		B-75-10891-K			CF60 - PURCHASE C/F FROM PUBLIC FISHERMAN					8109							
1605680 JONES		KETCHIKAN	7/14		JONES	7/18/75	N	N	N GLTY		7/18/75	N GLTY		DIS			
574-07-9397 SEATTLE		WA			MALE E-BR H-GR 11/20/27 210 5-9				N-RES								

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG	SUP	PLEA	USC NO TRAIL BAIL	IN DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC SUS
1605480A BOUTANG	SITKA	B-76-01940-T 02 CF22 - COMM FISH W/O LIC	5/02	1:30P	BOUTANG	5/17/76	N	N	NOLO	11236	5/17/76	GUILTY	125	125	SIS		
574-09-0993 SITKA		MALE	E-BR H-BK	7/09/27	160	5-10		RES									
1605550A BOUTANG	SITKA	B-76-01940-T 01 CF20 - COMM FISH W/O GEAR LIC	5/02	1:30P	BOUTANG	5/17/76	N	N	NOLO	11238	5/17/76	GUILTY	750	250			
574-09-0993 SITKA		MALE	E-BR H-BK	7/09/27	160	5-10		RES									
39390 NICHOLS	JUNEAU	B-76-01632-J CF16 - TAKE ILLEGAL HALIBUT	5/24	2:20P	NICHOLS	5/24/76	Y	N	GUILTY		6/09/76	GUILTY	500	250			
536-32-0023 JUNEAU		MALE	E-BR H-BR	12/09/36	150	5-8		RES									
1605480 CAIN	JUNEAU	B-76-00696-J CF22 - COMM FISH W/O LICENSE	7/13	3:00P	CAIN	7/17/76	N	N	GUILTY	12625	7/23/76	GUILTY	75	50			
522-68-4462 DOUGLAS		MALE	E-BU H-BR	7/11/52	165	6-1		RES									
35030A NICHOLS	JUNEAU	B-76-00348-J 02 CF42 - FAILURE TO VALIDATE REG	3/06	2:30P	NICHOLS	3/06/76	N	N	GUILTY	7004	3/08/76	GUILTY	25				
574-09-5178 JUNEAU		MALE	E-BO H-BR	4/02/26	220	5-11		RES									
35020C NICHOLS	JUNEAU	B-76-00348-J 01 CF42 - COMM FISH CRAB W/O REGISTERING	3/06	2:30P	NICHOLS	3/06/76	N	N	GUILTY	7004	3/08/76	GUILTY	25	25			
574-09-5178 JUNEAU		MALE	E-BU H-BR	4/02/26	220	5-11		RES									
35030A NICHOLS	JUNEAU	B-76-00347-J 02 CF42 - FAIL TO VALIDATE REG	3/06	2:00P	NICHOLS	3/06/76	N	N	GUILTY	7002	3/08/76	GUILTY	25				
574-18-8710 JUNEAU		MALE	E-BR H-BR	11/07/51	200	5-10		RES									
35020C NICHOLS	JUNEAU	B-76-00347-J 01 CF42 - COM FISH CRAB W/O REGISTERING	3/06	2:00P	NICHOLS	3/06/76	N	N	GUILTY	7002	3/08/76	GUILTY	25	25			
574-18-8710 JUNEAU		MALE	E-BR H-BR	11/07/51	200	5-10		RES									
16431409 NICHOLS	JUNEAU	B-76-00347 02 CF11 - COM FISH W/O HALIBUT PERMIT	3/06	2:00P	NICHOLS	3/06/76	N	N	GUILTY	7003	3/08/76	GUILTY	100	50			
574-18-8710 JUNEAU		MALE	E-BR H-BR	11/07/51	200	5-10		RES									
39390 RUSSELL	PYBUS BAY	B-76-00312-P CF16 - POSS OF UNDERSIZED HALIBUT	7/23	5:30P	RUSSELL	7/23/76	Y	N	GUILTY	11285	7/30/76	GUILTY	100	100			
574-09-0085 PETERSBURG		MALE	E-BU H-BL	10/28/24	170	5-9		RES									
39390 RUSSELL	PYBUS BAY	B-76-00311-P CF14 - POSSESSION UNDERSIZ HALIBUT	7/23	5:00P	RUSSELL	7/23/76	Y	N	GUILTY		8/02/76	GUILTY	20	20			
428-58-5754 KAKE		MALE	E-BU H-BL	5/27/33	185	5-10		RES									
4 LAKE	WRANGELL	B-76-00282-W CF02 - COMM FISH CLOSED PERIOD	5/07	4:55	LAKE	5/07/76	N	Y		7029					YAA		
000-00-0000 WRANGELL		MALE															
1605610 LAKE	WRANGELL	B-76-00279-W 02 CF20 - C/F UNLIC GEAR TRAP	5/15	3:00P	LAKE	6/03/76	N	N	GUILTY	0574	6/07/76	GUILTY	150	50			
574-07-5504 WRANGELL		MALE	E-BR H-BK	11/11/29	203	6-1		RES									

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED EQ	SEIZED OP	PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		B-76-00278-W 01 CF21 - C/F W/UNLIC VESSEL								0575							
1605510 LAKE 574-07-9604 WRANGELL		WRANGELL	3/19	2:00P	LAKE MALE E-BR H-BR 11/11/29 208 6	4/03/76			N GUILTY RES		4/07/76	GUILTY	150	50			
		B-76-00265-K 03 CF61 - FAILURE TO MARK C/F CRAB BUOYS								8052							
32050 C SEIBEL 574-09-5233 KETCHIKAN		KETCHIKAN	1/21	1:00P	C SEIBEL MALE E-BU H-GR 7/19/14 190 6	2/06/76	Y	Y	GUILTY RES		2/11/76	GUILTY	50				
		B-76-00265-K 02 CF11 - EXPORT UNPROCESSED CRAB								8054							
2 C SEIBEL 574-09-5233 KETCHIKAN		KETCHIKAN	10/15	3:30P	C SEIBEL MALE E-BU H-GR 7/19/14 190 6	2/06/76	N	N	GUILTY RES		2/11/76	GUILTY	50				
		B-76-00265-K 01 CF40 - UNATTENDED C/F CRAB POTS								8053							
32125A C SEIBEL 574-09-5233 KETCHIKAN		KETCHIKAN	2/04		C SEIBEL MALE E-BU H-GR 7/19/14 190 6	2/06/76	N	N	GUILTY RES		2/11/76	GUILTY	100	35			
		B-76-00264-K CF05 - FALSIFIED C/F LICENSE APPLICATION								8079							
1605665A JOHNSON 537-38-3694 KETCHIKAN		KETCHIKAN	1/21		JOHNSON MALE E-BU H-BR 9/27/41 165 5-9	3/11/76	N	N	GUILTY N-RES		3/15/76	GUILTY	100	100	SIS		
		B-76-00263-K CF05 - FALSIFIED C/F LICENSE APPLICATION								8078							
1605665A JOHNSON 562-64-7235 KETCHIKAN		KETCHIKAN	1/21		JOHNSON MALE E-BU H-BR 12/29/42 150 5-9	3/10/76	N	N	GUILTY N-RES		3/15/76	GUILTY	100	100	SIS		
		B-76-00251-K CF11 - EXPORT UNPROCESSED CRAB								8051							
2 C SEIBEL 544-46-4954 KETCHIKAN		KETCHIKAN	7/02	3:50P	C SEIBEL MALE H-BR 11/23/50 250 6-2	1/20/76	N	N	GLTY RES		1/21/76	GLTY	DIS				
		B-76-00247-K CF60 - INTERFERENCE W/COMM CRAB POTS															
1610055 SEIBEL 544-34-7053 KETCHIKAN		KETCHIKAN	12/12		C SEIBEL MALE E-BR H-BR 11/07/34 174 6	2/26/76	N	N	GLTY RES		3/23/76		DIS	DIS			
		B-76-00202-H 12 CF11 - C FISH W/O LIMITED ENTRY PERMIT								11159							
1643140 RUDDELL 574-26-5090 HAINES		HAINES	6/29	5:00P	RUDDELL MALE E-BR H-BR 5/24/54 140 5-7	6/29/76	N	N	HOLD RES		7/02/76	GUILTY	250				
		B-76-00202-H 11 CF20 - C FISH W/O GEAR LICENSE								11160							
1605570 RUDDELL 574-26-5090 HAINES		HAINES	6/29	5:00P	RUDDELL MALE E-BR H-BR 5/24/54 140 5-7	6/29/76	N	N	HOLD RES		7/02/76	GUILTY	250	250			
		C-76-14513 02 CF01 - COMMERCIAL FISHING IN CLOSED WATERS								12664							
2 HARPER 540-60-5677 NAPAKIAK		BETHEL	7/15	7:00P	HARPER MALE E-BR H-BR 10/30/49 200 6-3	7/15/76	N	N	GLTY RES				DIS	DIS			
		C-76-14513 01 CF01 - COMM FISH CLOSED WATER								12665							
2 HARPER 000-00-0000		BETHEL	7/15	7:00	HARPER MALE	7/15/76	Y	N	GLTY RES		7/28/76		DIS				
		C-76-13992-B CF01 - COMM FISH CLOSED WATER								12563							
2 574-46-5795 BETHEL			7/15	6:15P	HENSLEE MALE E-BR H-BR 9/21/42 100 5	7/15/76	Y	Y	RES		7/28/76		DIS				

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		C-76-13991-8	7/15	CF01 - COMM FISH CLOSED WATERS 8:20P	HENSLEE	7/15/76	N	N	N GLTY	12666							
574-12-9834 GOODNEWS BAY				MALE	E-BR H-BK 5/14/39 150 5-1				RES								
	B HARPER	C-76-13671 BETHEL	7/28	20 CF32 - IMPROPER REPORTING		N	N	N GLTY					DIS				
469-58-0655 BETHEL				MALE	E-BU H-BR 10/29/49				N-RES								
	B HARPER	C-76-13671 BETHEL	7/28	10 CF32 - IMPROPER REPORTING		N	N	N GLTY					DIS				
574-10-9273 EEK				MALE	E-BR H-BK 4/22/36				RES								
	J HARPER	C-76-13670 BETHEL	7/12	CF25 - OVERLENGTH GILL NET	HARPER	7/14/76	N	Y	N GLTY		7/16/76		DIS				
574-17-3122 BETHEL				MALE	E-BR H-BK 3/14/24 150 5-5				RES								
1605670S SCHUMACHER		C-76-13665-8 BETHEL	7/12	CF20 - ALLOW GEAR TO BE OPERATED BY ANOTHE	SCHUMACHER	N	N	N GLTY					DIS				
574-03-6782 BETHEL				MALE	E-BR H-BK 8/01/17 156 5-4				RES								
1605480A SCHUMACHER		C-76-13664-8	7/12	CF22 - COMM FISHING W/O LICENSE 8:80P	SCHUMACHER	7/12/76	N	N	N GLTY	12486	7/13/76		DIS				
574-20-3262 BETHEL				MALE	E-BR H-BR 11/14/47 150 5-9				RES								
1605480A SCHUMACHER		C-76-13663-8 10 BETHEL	7/12	CF22 - COMM FISH W/O LICENSE 7:45P	SCHUMACHER	7/12/76	N	N	N GLTY	12485	7/13/76		DIS				
000-00-0000 NAPAKIAK				FEMALE	E-BR H-GR 3/02/16 110 4-9				RES								
1605570 SCHUMACHER		C-76-13663-8 02 BETHEL	7/12	CF20 - COMM FISH W/O GEAR LICENSE 7:45P	SCHUMACHER	7/12/76	N	N	N GLTY	12490			DIS				
574-50-0489 NAPAKIAK				FEMALE	E-BR H-BR 6/16/57 105 4-10				RES								
1605480A SCHUMACHER		C-76-13663-8 01 BETHEL	7/12	CF22 - COMM FISH W/O LICENSE 7:45P	SCHUMACHER	7/12/76	Y	Y	N GLTY	12484			DIS				
574-50-0489 NAPAKIAK				FEMALE	E-BR H-BR 6/16/57 105 4-10				RES								
5670S SCHUMACHER		C-76-13662-8 BETHEL	7/12	CF20 - OPERATE GEAR LICENSED TO ANOTHER 8:50P		7/12/76	Y	Y	N GLTY				DIS	DIS			
574-17-3122 BETHEL				MALE	E-BR H-BK 3/14/24 160 5-5				RES								
	J HARPER	C-76-13660 BETHEL	7/12	CF25 - OVERLENGTH GILL NET	HARPER	7/14/76	N	Y	N GLTY		7/28/76		DIS				
574-50-0489 NAPAKIAK				FEMALE	E-BR H-BR 6/16/57 105 4-10				RES								
3331C HENSLEE		C-76-13659-8 02 ALAKANUK	7/09	CF01 - BLOCKING STREAM W/NET 5:50	HENSLEE	7/09/76	N	N	GUILTY	12444	7/14/76	GUILTY	250	100			
574-46-9862 ALAKANUK				MALE	E-PP H-BK 7/22/58 155 5-11				RES								
3334B HENSLEE		C-76-13659-8 01 ALAKANUK	7/09	CF61 - COMM FISH W/UNMARKED GEAR 5:50P	HENSLEE	7/09/76	Y	Y	GUILTY	1243	7/14/76	GUILTY	25	25			
574-46-9862 ALAKANUK				MALE	E-BR H-BK 7/22/58 155 5-11				RES								

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C-76-13658-8 20 CF14 - UNLAWFUL PURCHASE OF FISH																	
39197 HENSLEE		BETHEL	7/08		HENSLEE		N	N	GUILTY		7/17/76	GUILTY	200				
549-72-0999 BETHEL				MALE	E-BR H-BK 10/26/50 185 5-10				RES								
C-76-13658-8 10 CF14 - UNLAWFUL SALE OF FISH																	
39197 HENSLEE		BETHEL	7/08		HENSLEE		N	N	GUILTY		8/27/76	GUILTY	112	112			
574-10-0489 FORTUNALEDGE				MALE	E-BR H-BK 7/21/34 140 5-8				RES								
C-76-13657-8 02 CF02 - COMM FISH CLOSED PERIOD																	
1 HENSLEE		EMMONAK	7/09	8:15	HENSLEE	7/09/76	N	N	GUILTY		7/14/76	GUILTY	100	25			
574-46-2236 KOTLIK				MALE	E-BR H-BK 1/10/50 117 5-3				RES								
C-76-13657-8 01 CF02 - COMM FISH CLOSED PERIOD										12447							
1 HENSLEE		EMMONAK	7/09	3:15P	HENSLEE	7/09/76	Y		GUILTY		7/09/76	GUILTY	100	25			
574-10-8797 KOTLIK				MALE	E-BR H-BK 8/16/36 135 5-2				RES								
C-76-13654-8 CF02 - COMM FISH CLOSED PERIOD										12446							
1 HENSLEE		EMMONAK	7/09	7:00P	HENSLEE	7/09/76	N	Y			7/14/76	GUILTY	100	25			
574-10-2186 KOTLICK				MALE	E-BR H-BK 8/27/27 150 5-6				RES								
C-76-13655-8 CF02 - COMM FISH CLOSED PERIOD																	
1 HENSLEE		EMMONAK	7/09	7:00P	HENSLEE	7/09/76	N	Y	GUILTY		7/14/76	GUILTY	100	25			
574-30-4956 MT VILLAGE				MALE	E-BR H-BK 5/15/56 160 5-5				RES								
C-76-13654-8 CF02 - COMM FISH CLOSED PERIOD																	
1 GEIGER		EMMONAK	6/28	5:30P	GEIGER	6/28/76	N	N	GUILTY		7/23/76	GUILTY	100	25			
574-01-0836 ALAKANUK				MALE	E-BR H-BK 2/13/26 135 5-6				RES								
C-76-13653-8 CF02 - COMM FISH CLOSED PERIOD																	
1 GEIGER		EMMONAK	6/28	4:00P		6/28/76	N	Y	GUILTY		7/14/76	GUILTY	100	25			
532-44-9596 ALAKANUK				MALE	E-BR H-BK 3/19/46 [illegible] 5-5				RES								
C-76-13652-8 CF02 - COMM FISH CLOSED PERIOD																	
1 GEIGER		EMMONAK	6/28	5:15P		7/13/76	N	N	GUILTY		7/13/76	GUILTY	100				
574-10-2494 SHELDON PT				MALE	E-BR H-BK 3/01/28 160 5-9				RES								
C-76-04241-A CF11 - FAIL TO FILE FISH TICKET																	
391308 ROBERTSON		ANCHORAGE	2/14		ROBERTSON	2/14/76	N	N	GUILTY		5/14/76	GUILTY	500	100			
506-28-5421 ANCHORAGE				MALE	E-BR H-BK 2/21/31 150 5-9				RES								
C-76-12756 CF02 - COMM FISH CLOSED PERIOD																	
1 HENSLEE		SHELDONS	7/02	7:25P	HENSLEE	7/02/76	N	N	GUILTY		7/09/76	GUILTY	50	50			
574-14-5317 UNALAKLEET				MALE	E-BR H-BK 7/02/42 180 6-7				RES								
C-76-12755-8 CF02 - COMM FISH CLOSED PERIOD																	
1 HENSLEE			7/02	7:10P	HENSLEE	7/02/76	N	Y	GUILTY		7/09/76	GUILTY	700	700			
531-38-3041 SEATTLE		WA		MALE	E-BR H-BR 10/03/39 170 6-1				NON-RES								
C-76-12754-8 CF02 - COMM FISH CLOSED PERIOD																	
1 HENSLEE		ALAKANUK	7/02	8:15P	HENSLEE	7/02/76	N	Y	GUILTY		7/14/76	GUILTY	250	50			
574-09-0119 ALAKANUK				MALE	E-BR H-BK 2/15/29 [illegible] 5-5				RES								

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		C-76-12753		02 CF25 - COMM FISH OVERLENGTH NET													
1 HENSLEE		BETHEL	7/01	7:05P	KINZY	7/01/76	N	N	N	GLTY		7/16/76		DIS			
574-07-3122 BETHEL				MALE	E-BR H-BK	3/22/24	140	5-5		RES							
		C-76-12753		01 CF01 - COMM FISH CLOSED WATER													
2			7/01	7:05P	KINZY	7/01/76	Y	Y	N	GLTY		7/03/76		DIS			
574-07-3122 BETHEL				MALE	E-BR H-BK	3/22/24	140	5-5		RES							
		C-76-12752-8		CF01 - COMM FISH CLOSED WATER													
2 HENSLEE			7/01		HENSLEE	7/01/76	Y	Y	N	GLTY		10/20/76		DIS			
574-16-0746 BETHEL				MALE	E-BR H-BK	3/08/45	150	5-6		RES							
		C-76-12751-8		CF01 - COMM FISH CLOSED WATER													
2 HENSLEE			7/01		HENSLEE	7/01/76	Y	Y	N	GLTY		10/19/76		DIS			
574-12-9354 BETHEL				MALE	E-BR H-BK	4/21/38	190	5-8		RES							
		C-76-12750-8		CF01 - COMM FISHING CLOSED WATER													
2			7/01	4:05P	HENSLEE	7/01/76	Y	Y	N	GLTY		7/03/76		DIS			
574-24-4892 KWETHLUK				MALE	E-BR H-BK	2/14/58	145	5-8		RES							
		C-76-12748-8		CF01 - COMM FISH CLOSED WATER													
2 HENSLEE			7/01	6:05P	HENSLEE	7/03/76	N	N	N	GLTY		10/20/76		DIS			
574-16-3477 BETHEL				FEMALE	E-BR H-BK	7/30/[illegible]	130	5-1		RES							
		C-76-12746-8	02	CF61 - IMPROPERLY MARKED GEAR							12655						
2 KINZY		BETHEL	6/24	8:30P	KINZY	/24/76	Y	Y		GUILTY		6/28/76	GUILTY	50	50		
574-07-2511 BETHEL				MALE	E-BR H-BK	12/13/[illegible]	160	5-6		RES							
		C-76-12744-8		CF01 - COMM FISH CLOSED WATER													
I			7/01	6:05P	HENSLEE	7/01/76	Y	Y	N	GLTY		7/03/76		DIS			
574-30-8740				MALE	E-BR H-BK	11/30/57	120	5-1		RES							
		C-76-12484-8		CF22 - COMM FISH W/O LICENSE													
1605480A HENSLEE		GOODNEWS	6/24	7:40P	HENSLEE	7/01/76	N	N		NOLO		7/01/76	GUILTY	100	25		
574-32-1467 PLATINUM				MALE	E-BR H-BK	6/23/53	145	5-6		RES							
		C-76-12482-8		CF20 - COMM FISH W/O GEAR LIC							12483						
1605570 HENSLEE		GOODNEWS	6/24	7:40	HENSLEE	7/06/76	Y	Y		NOLO		7/06/76	GUILTY	200	100		
574-22-0162 GOODNEWS BAY				MALE	E-BR H-BK	4/13/51	150	5-7		RES							
		C-76-11937-8		CF61 - UNIDENTIFIED GEAR BUOY							12653						
2 KINZY		BETHEL	6/23	8:10P	KINZY	6/25/76	Y	Y		GUILTY		6/25/76	GUILTY	100	100		
574-10-2289 NUNAPITCHUK				MALE	E-BR H-BK	11/27/35	170	5-6		RES							
		C-76-11934-8		CF22 - COMM FISH W/O LICENSE													
1605480A HENSLEE		BETHEL	6/23	7:45P	HENSLEE	6/23/76	N	N		NOLO		6/24/76	GUILTY	100	100		
574-62-0144 SEATTLE		WA		MALE	E-HZ H-BR	9/16/[illegible]	160	5-11		RES							
		D-76-06410	20	CF01 - COMM FISH CLOSED WATER													
E WELLMAN		NAKNEK	7/05	3:15P	THOMPSON	7/05/76	N	N	N	GLTY		7/19/76	GUILTY	500	500		
549-14-7656 MONTEREY		CA		MALE	E-BR H-BK	12/09/[illegible]	180			N-RES							

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		D-76-06411-K 10 CF01 - COMM FISH CLOSED AREA															
6350F	MAYBERRY	NAKNEK	7/14	8:40	DYKEMA	7/14/76	N	N	GUILTY		7/19/76	GUILTY	1000				
574-12-8746	NAKNEK			MALE	E-BR H-PK	5/01/41	175	6-1	RES								
		D-76-06411-K 20 CF01 - COMM FISH CLOSED WATER															
6350F	MAYBERRY	NAKNEK	7/14	8:40A	DYKEMA	7/14/76	N	N	GUILTY		7/19/76	GUILTY	500				
574-14-4905	UNALAKLEET			MALE	E-BR H-BR	9/07/41	180	5-7	RES								
		D-76-06412 10 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	3:15P	THOMPSON	7/07/76	N	N	N GLTY		7/16/76	GUILTY	1000				
553-03-3918	MARTINEZ	CA		MALE	E-HZ H-BR	6/29/13	195	5-7	N-RES								
		D-76-06412 20 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	3:15P	RODGERS	7/07/76	N	N	N GLTY		7/16/76	N GLTY	1000				
000-00-0000				MALE													
		D-76-06413-K 10 CF01 - COMM FISH CLOSED AREA															
6350F	MAYBERRY	NAKNEK	7/14	10:20P	DYKEMA	7/17/76	N	N	NOLO		7/19/76	GUILTY	1000				
553-52-2467	EDMONDS	WA		MALE	E-BR H-BR	10/03/41	150	5-6	N-RES								
		D-76-06413-K 20 CF01 - COMM FISH CLOSED AREA															
A	YBERRY	NAKNEK	7/14	10:20P	DYKEMA	7/14/76	N	N	NOLO		7/19/76	GUILTY	500				
574-14-5402	ALEKANGIK			FEMALE	E-BR H-PK	7/10/44	110	4-1									
		D-76-06414 10 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	8:30A	BRANTLEY	7/07/76	N	N	N GLTY		7/16/76	GUILTY	1000	1000			
551-28-7567	MONTEREY	CA		MALE	E-BR H-BR	11/26/18	200	5-10	N-RES								
		D-76-06414 20 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	8:30A	REDSTON	7/07/76	N	N	N GLTY		7/16/76	GUILTY	500				
000-00-0000	MONTEREY	CA		MALE	E-BU H-WT	3/12/15	176	5-11	N-RES								
		D-76-06415 11 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	3:15P	RODGERS	7/07/76	N	N	N GLTY		7/17/76	GUILTY	1000				
551-18-9597	SEATTLE	WA		MALE	E-BU H-GR	1/18/09	160	5-8	N-RES								
		D-76-06415 12 CF61 - OBSCURED REGULATION NUMBERS															
9343	WELLMAN	NAKNEK	7/05	3:15P	THOMPSON	7/07/76			N GLTY		7/17/76	GUILTY					
551-18-9597	SEATTLE	WA		MALE	E-BU H-GR	1/18/09	160	5-8	N-RES								
		D-76-06415 13 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	3:15	RODGERS	7/07/76	N	N	N GLTY		7/17/76	GUILTY	1000				
544-26-8253	SEATTLE	WA		MALE	E-BU H-BR	4/10/30	210	6-1	N-RES								
		D-76-06416 10 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	3:15P	RODGERS	7/07/76	N	N	N GLTY		7/16/76	GUILTY	2000				
575-26-2998	CORDOVA			MALE		6/23/3	180	5-10	RES								
		D-76-06416 20 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	3:15P	RODGERS	7/07/76	N	N	N GLTY		7/16/76	GUILTY	500				
574-14-4364	CORDOVA			MALE	E-BR H-BR	8/14/40	140	5-8	RES								

VIOLATION CODE	COMPLAINT SIGNED BY	VIOLATION LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG EQP	PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	NO LIC REV
		D-76-06417-K 10 CF01 - COMM FISH CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/05	3:15	RODGERS	7/05/76	N N			7/09/76		DIS				
537-18-4159	EDMONDS	WA	MALE	E-BR H-BR	7/09/26	185 5-11	N-RES									
		D-76-06417-K 20 CF01 - COMM FISH CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/05	3:15	RODGERS	7/05/76	N N			7/09/76		DIS				
533-50-5911	EDMONDS	WA	MALE	E-BR H-BR	12/31/47	205 6-3	N-RES									
		D-76-06418-K CF22 - CF W/O LICENSE														
1605480A	WELLMAN	NAKNEK	7/01	8:00A	PEDSTON	7/01/76	N N	GUILTY		7/07/76	GUILTY	50	50	30		
574-18-7047	SOLDOTNA		MALE	E-HZ H-BL	6/08/50	170 5-6	RES									
		D-76-06419-K CF01 - COMM FISH CLOSED AREA														
6350F	WELLMAN	NAKNEK	7/03	6:07A	PEDSTON	7/04/76	N N	NOLO		7/12/76	GUILTY			30		
000-00-0000	EGGIK		MALE	E-BR H-BR	2/20/49	145 5-6	RES									
		D-76-06419-K 10 CF01 - COMM FISH CLOSED AREA														
6350F	WELLMAN	NAKNEK	7/03	6:07	PEDSTON	7/03/76	N N	NOLO		7/12/76	GUILTY			30		
000-00-0000	EGGIK		FEMALE	E-BR H-BR	6/04/50	130 5-3	RES									
		D-76-06420-K 10 CF01 - COMM FISH CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/05	3:15	THOMPSON	7/07/76	N N			7/15/76		DIS				
542-36-3307	ASTORIA	OR	MALE	E-HZ H-BK	9/03/32	150 5-11	N-RES									
		D-76-06420-K 20 CF01 - COMM FISH CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/05	3:15P	RODGERS	7/07/76				7/15/76		DIS				
543-78-0649	ASTORIA	OR	MALE	E-HZ H-BK	4/19/58	190 5-10	N-RES									
		D-76-06421 10 CF01 - COMM FISH CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/05	3:15P	THOMPSON	7/07/76	N N	GLTY		7/17/76	GUILTY	1000				
574-09-5485	CHUGIAK		MALE	E-BR H-BK	10/14/31	165 5-7	RES									
		D-76-06421 20 CF01 - COMM FISH CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/05	3:15P	RODGERS	7/07/76	N N	GLTY		7/17/76	GUILTY					
574-09-5485	CHUGIAK		FEMALE	E-BR H-BK	6/17/40	135 5-7	RES									
		D-76-06422 10 CF01 - COMM FISH IN CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/04	12:30P	RODGERS	7/07/76	N N	GLTY		7/16/76	N GLTY					
562-58-2328	SEASIDE	CA	MALE	E-BR H-BK	7/07/44	130 5-7	W-RES									
		D-76-06422 20 CF01 - COMM FISH IN CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/04	12:30P	THOMPSON	7/07/76	N N	GLTY		7/16/76	N GLTY					
570-56-2736	MONTEREY	CA	MALE	E-GN H-BR	9/15/48	160 5-11	W-RES									
		D-76-06423 10 CF01 - COMM FISH IN CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/04	10:55A	RODGERS	7/12/76	N N	GLTY		7/16/76	GUILTY	1500				
000-00-0000	PT TOWNSEND	WA	MALE	E-BR H-BR	3/10/37	150 5-10	W-RES									
		D-76-06423 20 CF01 - COMM FISH IN CLOSED WATER														
6350F	WELLMAN	NAKNEK	7/04	10:55A	THOMPSON	7/12/76	N N	GLTY		7/16/76	GUILTY	1500				
531-44-9727	PT TOWNSEND	WA	MALE		3/10/44	170 5-10	W-RES									

VIOLATION CODE	COMPLAINT SIGNED BY	VIOLATION LOCATION	VIOLATION DATE TIME	CITED BY	CITED DATE	SEIZED FG	BOP	PLEA	USC NO TRAIL BAIL	FINE TM DATE VERDICT	TOTAL	NET	JAIL TOTAL	NET	MO LIC SUSP
		D-76-06424-K 20 CF01 - COMM FISH CLOSED WATER													
6350F WELLMAN 705-07-7200 ASTORIA	NAKNEK OR	7/04	12:30P THOMPSON MALE		7/07/76	N	N	NOLO N-RES		7/19/76 N GLTY DIS					
		D-76-06425-K CF01 - COMM FISH CLOSED WATER													
6350F WELLMAN 531-46-6597 SEATTLE	NAKNEK WA	6/29	3:35P THOMPSON MALE	E-BR H-BR	6/29/76 7/14/48	N 185	N 6-2	NOLO N-RES		6/30/76 GUILTY			30		
		D-76-06425-K 20 CF01 - COMM FISH CLOSED WATER													
6350F WELLMAN 539-28-6858 SEATTLE	NAKNEK WA	6/29	3:35P THOMPSON MALE	E-BR H-BR	6/29/76 8/18/32	N 204	N 6-1	NOLO N-RES		6/30/76 GUILTY			30		
		D-76-06426-K 01 CF11 - COMM FISH W/O ENTRY PERMIT													
5100A WELLMAN 000-00-0000	NAKNEK	7/04	8:00A MAYBERRY MALE		7/04/76	Y	Y	NOLO RES		7/07/76 GUILTY	718	718			
		D-76-06426-K 02 CF20 - COMM FISH W/O G&S4 LICENSE													
1605570 WELLMAN 000-00-0000	NAKNEK	7/04	8:00A MAYBERRY MALE		7/04/76	N	N	NOLO RES		7/07/76 GUILTY					
		D-76-06427 10 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 557-28-3820 SUSUN	NAKNEK CA	7/04	10:55A RODGERS MALE	E-BR H-BK	7/07/76 7/29/19	N 240	N 5-10	N GLTY N-RES		7/16/76 GUILTY	1000				
		D-76-06427 20 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 561-25-6296 SAN FRANCISCO	NAKNEK CA	/04	10:55A THOMPSON MALE	E-BR H-BK	7/07/76 3/25/22	N 190	N 6	N GLTY N-RES		7/16/76 GUILTY	1000				
		D-76-06427-K 10 CF01 - COMM FISH CLOSED WATER													
6350F WELLMAN 544-62-4527 ASTORIA	NAKNEK OR	7/04	12:30P RODGERS MALE	E-BR H-BR	7/07/76 5/03/51	N 170	N 5-8	NOLO N-RES		7/13/76 N GLTY DIS					
		D-76-06428 10 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 538-32-0693 EVERETTE	NAKNEK WA	7/05	3:15P THOMPSON MALE	E-BU H-BR	7/07/76 10/22/33	N 185	N 5-10	N GLTY N-RES		GUILTY	1000				
		D-76-06428 20 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 534-56-0046 EVERETTE	NAKNEK WA	7/05	3:15P RODGERS MALE	E-GR H-PL	7/11/51	155	5-5	N GLTY N-RES		7/16/76 GUILTY	DIS				
		D-76-06429 10 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 545-36-7435 MILLBREA	NAKNEK CA	7/04	10:55 RODGERS MALE	E-BR H-BK	7/07/76 7/03/2[illegible]	N 190	N 6	N GLTY N-RES		7/15/76 GUILTY	500	500			
		D-76-06429 20 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 000-00-0000 MILLBRAE	NAKNEK OR	7/04	10:55P THOMPSON MALE	E-BR H-BR	7/07/76 7/03/2[illegible]	N 190	N 5-10	N GLTY N-RES		7/15/76 GUILTY			30		
		D-76-06430 10 CF01 - COMM FISH IN CLOSED WATER													
6350F WELLMAN 541-03-0630 EUGENE	NAKNEK OR	7/03	4:55A THOMPSON MALE	E-GR H-GR	7/07/76 10/11/[illegible]	N 170	N 5-6	N GLTY N-RES		7/15/76 GUILTY	1000				

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		D-76-06430			20 CF01 - COMM FISH CLOSED WATER												
6350F WELLMAN	NAKNEK		7/02	4:55A	REDSIDE	7/07/76	N	N	N	GLTY				DIS			
000-00-0000			MALE							N-RES							
		D-76-06431			01 CF61 - OBSCURED REGULATION NUMBERS												
9343 WELLMAN	NAKNEK		7/03	11:57A	DYKEMA	7/08/76	N	N	N	GLTY	7/12/76			DIS			
532-40-5542 SEATTLE		WA	MALE		C-BU H-BR	10/06/29	200	6-2		N-RES							
		D-76-06431			02 CF01 - COMM FISH IN CLOSED WATER												
63200 WELLMAN	NAKNEK		7/03	11:57A	THOMPSON	7/08/76	N	N	N	GLTY	7/12/76	GUILTY	500	500	30		
532-40-5542 SEATTLE		WA	MALE		C-BU H-BR	10/06/29	200	6-2		N-RES							
		D-76-06432-K			CF01 - COMM FISH CLOSED AREA												
6350F MAYBERRY	NAKNEK		7/04	10:55A	RODGERS	7/10/76	N	N		NOLO	7/19/76	GUILTY	1000				
572-14-1321 PITTSBURG		CA	MALE		E-BR H-BR	2/11/16	190	5-7		N-RES							
		D-76-06433-K			01 CF11 - C F W/O LIMITED ENTRY PERMIT												
20051004 WELLMAN	NAKNEK		7/01	8:00A	SHARP	5/25/76	N	N		NOLO	7/02/76	GUILTY					
533-62-4890 BELLINGHAM		WA	MALE		E-BU H-BL	6/21/55	130	5-8		N-RES							
		D-76-06433-K			02 CF20 - COMM FISH W/O DRIFT LICENSE												
1605570 WELLMAN	NAKNEK		7/01	8:00A	SHARP	7/01/76	N	N		NOLO	7/02/76			DIS			
533-62-4890 BELLINGHAM		WA	MALE		E-BU H-BL	6/21/55	130	5-8		N-RES							
		D-76-06433-K			11 CF11 - COMM FISH W/O SEINE PERMIT												
5100A WELLMAN	NAKNEK		7/01		SHARP	7/02/76	N	N		GUILTY	7/03/76	GUILTY	2000				
000-00-0000 BELLINGHAM		WA	MALE		E-BR H-BR	4/01/57	160	5-9		N-RES							
		D-76-06433-K			12 CF22 - COMM FISH W/O LICENSE												
1605480A WELLMAN	NAKNEK		7/01		SHARP	7/03/76	N	N		GUILTY	7/03/76	GUILTY	100				
000-00-0000 BELLINGHAM		WA	MALE		E-BR H-BR	4/01/57	160	5-9									
		D-76-06433-K			13 CF20 - COMM FISH W/O GEAR LICENSE												
160557 WELLMAN	NAKNEK		7/01		SHARP	7/03/76	N	N		GUILTY	7/03/76	GUILTY	100				
000-00-0000 BELLINGHAM			MALE		E-BR H-BR	4/01/57	160	5-9		N-RES							
		D-76-06434			10 CF01 - COMM FISH IN CLOSED WATER												
6350F WELLMAN	NAKNEK		6/29	2:40P	SHARP	7/01/76	N	N	N	GLTY	7/16/76	GUILTY	2000				
539-03-2294 TACOMA		WA	MALE		E-GR H-BR	7/02/19	180	5-6		N-RES							
		D-76-06434			20 CF01 - COMM FISH IN CLOSED WATER												
6350F WELLMAN	NAKNEK		6/29	2:40P	SHARP	6/25/76	N	N						DIS			
537-52-5160 AUBURN		WA	MALE		E-BR H-BR	7/07/50	190	5-9		N-RES							
		D-76-06435-K			CF01 - COMM FISH CLOSED AREA												
6350F WELLMAN	NAKNEK		7/05	3:15P	RODGERS	7/06/76	N	N			7/09/76			DIS			
000-00-0000			MALE							N-RES							
		D-76-06435-K			20 CF01 - COMM FISH CLOSED AREA												
6350F WELLMAN	NAKNEK		7/05	3:15P	RODGERS	7/06/76	N	N		NOLO	7/07/76	GUILTY	500	500	30		
553-46-2123 SAN FRANCISCO	CA		MALE		E-BR H-BR	10/07/20	131	5-4		N-RES							

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		D-76-06436-K			CF01 - COMM FISH CLOSED AREA												
6350E WELLMAN	NAKNEK		6/29	3:14P	SHARP	6/29/76	N	N	NOLO			7/01/76 GUILTY	1000	1000			
543-40-1255 ASTORIA		OR		MALE	E-BR H-GR	12/02/37	170	6		N-RES							
		D-76-06437-K			CF01 - CF CLOSED WATERS												
6350E WELLMAN	NAKNEK		7/06	9:50A	DYKEMA	7/06/76	N	N	NOLO			7/08/76 GUILTY	1000	1000	30		
478-20-2409 WALLA WALLA		WA		MALE	E-BU H-BR	1/12/24	200	6		N-RES							
		D-76-06438			CF01 - COMM FISH CLOSED WATER												
6350E WELLMAN	NAKNEK		6/29	11:07A	SHARP	7/02/76	N	N	GLTY			7/19/76 GUILTY	1000	1000			
559-26-4365 SAN FRANCISCO		CA		MALE	E-BR H-BR	10/20/25	150	5-6		N-RES							
		D-76-06439-K			CF01 - CF CLOSED WATERS												
6350E WELLMAN	NAKNEK		7/05	3:15P	THOMPSON	7/05/76	N	N	NOLO			7/09/76 GUILTY	500	500	30		
516-22-6516 WEST LINN		OR		MALE	E-BU H-BR	4/16/24	190	5-11		N-RES							
		D-76-06440-K			CF01 - COMM FISH CLOSED AREA												
6320E WELLMAN	NAKNEK		7/10	10:08A	THOMPSON	7/10/76	N	N	NOLO			7/12/76 GUILTY	500	500	30		
533-24-0125 EDMONDS		WA		MALE	E-BU H-BR	5/17/28	160	5-8		N-RES							
		D-76-06441			CF01 - COMM FISHING CLOSED WATER												
6350E WELLMAN	NAKNEK		7/05	4:00P	THOMPSON	7/05/76	N	N	N GLTY			7/17/76 GUILTY	1000				
537-12-5656 OLYMPIA		WA		MALE	E-BR H-BR	4/25/23	180	5-10		N-RES							
		D-76-06442			CF01 - COMM FISH IN CLOSED WATER												
6320E WELLMAN	NAKNEK		7/10	1:50P	DYKEMA	7/12/76	N	N	N GLTY			7/17/76 GUILTY	1000				
534-30-3634 NEILTON		WA		MALE	E-BR H-BK	2/26/35	155	5-7		N-RES							
		D-76-06443			CF01 - COMM FISH IN CLOSED WATER												
6350E WELLMAN	NAKNEK		7/06	9:42P	THOMPSON	7/06/76	N	N	N GLTY			7/17/76 GUILTY	1000				
567-16-8217 PEORD BAY				MALE	E-BU H-GR	4/16/17	160	5-4		RES							
		D-76-06449-K			CF01 - COMM FISH CLOSED WATER												
6350E WELLMAN	NAKNEK		7/10	5:35	DYKEMA	7/12/76	Y	N	N GLTY			7/30/76 GUILTY	1000				
366-12-2307 ANCHORAGE				MALE	E-BR H-BL	10/14/17	175	6		RES							
		D-76-06513-K			CF01 - COMM FISH CLOSED WATER												
6320E MAYBERRY	NAKNEK		7/10	10:08A	THOMPSON	7/10/76	N	N								DIS	
536-26-0442 EDMONDS		WA		MALE	E-BU H-BR	6/07/32	165	5-9		N-RES							
		D-76-06519			CF01 - COMM FISH CLOSED AREA												
6350E WELLMAN	NAKNEK		7/10	3:05P	THOMPSON	7/10/76	N	N			7/29/76					DIS	
000-00-0000 MONTEREY		CA		MALE	E-BR H-BK	7/07/44	160	5-7		N-RES							
		D-76-06520			CF01 - COMM FISH CLOSED AREA												
6350E WELLMAN	NAKNEK		7/06	9:42P	DYKEMA	7/06/76	N	N								DIS	
574-18-5934 NE				MALE	E-BR H-BK	6/13/52	160	5-6		RES							
		D-76-06524		01	CF60 - CERTAIN ACTS UNLAWFUL												
5920A MAYBERRY	NAKNEK		7/03		MAYBERRY	7/20/76	N	N	NOLO			8/04/76 GUILTY	250	250			
534-34-3570 SEATTLE		WA		MALE	E-BU H-BR	1/09/39	175	5-10		N-RES							

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		D-76-06524	02 CF61 - REPORTS REQUIRED BY PROCESSOR														
5920A MAYBERRY	NAKNEK	7/03			MAYBERRY	7/20/76	N	N	NCLO			8/04/76	GUILTY	250	250		
534-34-3570 SEATTLE	WA		MALE	E-BU H-BR	1/09/38	175	5-10		N-RES								
		D-76-06410	10 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN	NAKNEK	7/05	3:15P	RODGERS		7/05/76	N	N	N GLTY			7/16/76	GUILTY	500	500		
000-00-0000 MONTEREY	CA		MALE	E-BR H-BR	1/18/21	165	6		N-RES								
		D-76-06532-K	CF01 - COMM FISH CLOSED AREA														
6350F MAYBERRY	NAKNEK	8/03	2:50P	MAYBERRY		8/07/76	N	N	N GLTY			8/16/76	N GLTY	DIS			
574-18-5506 NAKNEK			MALE	E-BU H-BL	2/23/49	190	5-9		RES								
		D-76-06533-K	CF01 - COMM FISH CLOSED AREA														
6350F MAYBERRY	NAKNEK	8/03	2:50P	MAYBERRY		8/03/76	N	N				8/16/76		DIS			
538-57-8212 KING SALMON			MALE	E-BU H-BR	5/05/51	160	5-9		RES								
		D-76-06534-K	CF01 - COMM FISH CLOSED AREA														
6350F MAYBERRY	NAKNEK	8/03	2:50P	MAYBERRY		8/03/76	N	N				8/16/76	N GLTY	DIS			
574-12-0535 NAKNEK			MALE	E-BR H-BR	8/26/39	185	5-6		RES								
		D-76-06535-K	10 CF01 - COMM FISH CLOSED AREA														
6350F MAYBERRY	NAKNEK	8/03	2:50P	MAYBERRY			N	N				8/09/76		DIS			
572-14-1321 PITTSBURG	CA		MALE	E-BR H-BR	2/11/16	190	5-7		N-RES								
		D-76-06409	20 CF01 - COMM FISH CLOSED WATER														
6320F WELLMAN	NAKNEK	7/03	12:50P	ROGERS		7/03/76	N	N	N GLTY			7/17/76	GUILTY	1000			
557-07-6143 MARTINEZ	CA		MALE	E-BR H-GR	5/11/14	135	5-5		N-RES								
		D-76-06409	10 CF01 - COMM FISH CLOSED WATER														
6320F WELLMAN	NAKNEK	7/03	12:50P	ROGERS		7/03/76	N	N	N GLTY			7/17/76	GUILTY	1000			
558-24-7113 MARTINEZ	CA		MALE	E-BR H-BR	10/13/10	130	5-3		N-RES								
		D-76-06408	20 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN	NAKNEK	7/05	3:15P	SHARP		7/07/76	N	N	N GLTY			7/15/76	GUILTY	1000			
533-44-0020 BELLINGHAM	WA		MALE	E-BR H-BR	9/06/46	190	5-9		N-RES								
		D-76-06408	10 CF01 - COMM FISH IN CLOSED WATER														
6350F WELLMAN	NAKNEK	7/05	3:16P	DYKEMA		7/07/76	N	N	N GLTY			7/16/76	GUILTY	2000			
536-50-8736 BELLINGHAM	WA		MALE	E-BR H-BR	10/15/48	175	5-7		N-RES								
		D-76-06557-D	CF22 - COMM FISH W/O LICENSE							11527							
1605480A ROBERTSON	DILLINGHA	6/18	11:45A	ROBERTSON		6/18/76	N	N	GUILTY			6/20/76	GUILTY	15	15		
574-24-0989 ALEKNAGIK			MALE	E-BR H-BR	1/25/50	150	5-8		RES								
		D-76-06558-D	CF22 - COMM FISH W/O LICENSE														
1605480A ROBERTSON	DILLINGHA	6/18	12:05	ROBERTSON		6/18/76	N	N	GUILTY			6/20/76	GUILTY	15	15		
574-18-3238 MANOKOTAK			MALE	E-BR H-BR	1/06/45	150	5-1		RES								
		D-76-06559-D	CF22 - COMM FISH W/O LICENSE														
1605480A ROBERTSON	DILLINGHA	6/18	12:20P	ROBERTSEN		6/18/76	N	N	NCLO			6/20/76	GUILTY	15	15		
574-46-0659 KOLIGANEK			MALE	E-BR H-BR	4/24/57	130	5-7		RES								

VIOLATION CODE	COMPLAINT SIGNED BY	VIOLATION LOCATION	VIOLATION DATE	VIOLATION TIME	CITED BY	CITED DATE	SEIZED FG	SEIZED RCP	USC NO TRAIL PLEA	BAIL	IN DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		D-76-06562-D		CF01 - COMM FISH CLOSED WATERS						11535							
39250A JORDAN	DILLINGHA	6/22	3:20P	ROBERTSON		6/22/76	Y	N	GUILTY		6/23/76	GUILTY	500	250			
543-09-0212 BETHEL			MALE	E-BR H-BR	3/18/24	145	5-7		RES								
		D-76-06563-D		CF01 - COMM FISH CLOSED WATERS						11536							
39250A ROBERTSON	DILLINGHA	6/22	4:10P	ROBERTSON		6/22/76	Y	N	N GLTY		9/30/76	GUILTY	500	250			
574-03-4323 ALEKNAGIK			MALE	E-BR H-BK	5/29/14	172	5-11		RES								
		D-76-06564-D		CF01 - COMM FISH CLOSED WATER						11533							
39250A ROBERTSON	DILLINGHA	6/22	2:30P	ROBERTSON		6/22/76	Y	N	NOLO		6/23/76	GUILTY	500	250			
574-22-0581 DILLINGHAM			MALE	E-BR H-BR	7/26/48	150	5		RES								
		D-76-06567-D		CF01 - CF CLOSED WATERS													
39250A BLODGETT	DILLINGHA	6/22	3:40P	HEIER		7/21/76	N	N	N GLTY		9/29/76	N GLTY					
574-03-9364 KOLIGANEK			MALE	E-BR H-BK	5/15/21	155	5-7		RES								
		D-76-06568-D		CF01 - CF CLOSED WATERS													
39250A BLODGETT	DILLINGHA	6/25	6:15P	BLODGETT		7/01/76	N	N	N GLTY	300	9/29/76	N GLTY					
574-14-7331 COPPER CENTER			MALE	E-BU H-BR	10/21/40	150	5-8		RES								
		D-76-06569-D 01		CF01 - CF CLOSED WATERS						6509							
39250A BLODGETT	DILLINGHA	6/28	5:20P	BLODGETT		6/29/76	N	N	GUILTY		7/04/76	GUILTY	2000	1100			
574-03-1231 TOGIAK			MALE	E-BR H-BK	5/19/02	200	5-6		RES								
		D-76-06569-D 02		CF61 - CF WITH IMPROPER ADDSG NO						6510							
6342 BLODGETT	DILLINGHA	6/28	5:20P	BLODGETT		6/28/76	Y	N	GUILTY		7/04/76	GUILTY	15	15			
574-03-1231 TOGIAK			MALE	E-BR H-BK	5/19/02	200	5-6		RES								
		D-76-06570-D		CF22 - COMM FISH W/O A LICENSE						12505							
1605480A PAUL	DILLINGHA	6/28	3:15P	PAUL		6/28/76	N	N						DIS			
574-09-4866 DILLINGHAM			MALE	E-BR H-BR	7/29/31	160	5-9		RES								
		D-76-06571-D		CF22 - COMM FISH W/O LICENSE						12504							
1605480A PAUL	DILLINGHA	6/28	1:45P	PAUL		6/29/76	N	N			6/29/76	N GLTY		DIS			
349-10-0775 ORVILLE	CA		MALE	E-BU H-GR	10/04/09	150	5-11		N-RES								
		D-76-06574-D 01		CF61 - COMM FISH W/O ADF&G # PLATE						12512							
1605520A PAUL	DILLINGHA	7/02	8:00P	PAUL		7/02/76	N	N	GUILTY		7/04/76	GUILTY	25	25			
538-18-2987 BELLINGHAM	WA		MALE	E-BU H-BR	4/19/25	160	6		N-RES								
		D-76-06574-D 02		CF61 - OBSCURED ADF&G #						12513							
6342 PAUL	DILLINGHA	7/02	8:00P	PAUL		7/02/76	N	N	GUILTY		7/04/76	GUILTY	15	15			
538-18-2987 BELLINGHAM	WA		MALE	E-BU H-BR	4/19/25	160	6		N-RES								
		D-76-06575-D		CF02 - COMM FISH CLOSED PERIOD						12511							
6320D PAUL	DILLINGHA	7/02	3:34P	PAUL		7/02/76	Y	N	N GLTY	250	7/25/76	N GLTY					
501-16-2279 MT LK TERRACE	WA		MALE	E-BU H-GR	7/03/20	230	6		N-RES								
		D-76-06577-D		CF22 - COMM FISH W/O LICENSE IN POSSESSION						12515							
1605480A PAUL	DILLINGHA	7/03	4:15P	PAUL		7/03/76	N	N	GUILTY		7/04/76	GUILTY	10	10			
574-20-6060 ANCHORAGE			MALE	E-BR H-BK	1/18/50	165	6-1		RES								

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		D-76-06578-D 01 CF22 - COMM FISH W/O LICENSE IN POSSESSION								12514							
1605480A PAUL	DILLINGHA	7/03	4:16A	PAUL	7/03/76	N	N	GUILTY			7/04/76	GUILTY	10	10			
574-05-3259 ANCHORAGE		MALE	E-BR H-BR	10/07/24	250	5-6		RES									
		D-76-06578-D 02 CF20 - COMM FISH W/O GEAR LICENSE IN POSS								12514							
16056706 PAUL	DILLINGHA	7/03	4:16A	PAUL	7/03/76	N	N	GUILTY			7/04/76	GUILTY	10	10			
574-05-3259 ANCHORAGE		MALE	E-BR H-BR	10/07/24	250	5-6		RES									
		D-76-06585-D CF01 - CF CLOSED WATERS								6516							
39250A BLODGETT	DILLINGHA	7/07	5:20A	BLODGETT	7/07/76	N	N	SOLD			7/09/76	GUILTY	1000	500			
574-03-9361 ANCHORAGE		MALE	E-HZ H-GR	1/22/19	167	5-7		RES									
		D-76-06586-D CF22 - COMM FISH W/O LICENSE IN POSSESSION								6517							
1605480A BLODGETT	DILLINGHA	7/07	5:20A	BLODGETT	7/07/76	N	N	SOLD			7/09/76	GUILTY	15	15			
574-30-1999 ANCHORAGE		MALE	E-HZ H-BR	3/21/56	155	5-4		RES									
		D-76-06587-D CF02 - CF CLOSED PERIOD								6518							
6320D BLODGETT	DILLINGHA	7/07	6:22A	BLODGETT	7/07/76	N	N	SOLD			7/18/76	GUILTY	200	200			
520-05-6145 DILLINGHAM		MALE	E-BU H-BR	4/09/17	140	5-4		RES									
		D-76-06596-D CF02 - COMM FISH - CLOSED PERIOD								6519							
6320B BLODGETT	DILLINGHA	7/09	10:04A	JORDAN	7/09/76	Y	N	GUILTY			7/12/76	GUILTY	500	250			
574-12-9336 QUINHAGAK		MALE	E-BR H-BK	6/27/41	150	5-6		RES									
		D-76-06597-D CF02 - COMM FISH - CLOSED PERIOD								6520							
63208 BLODGETT	DILLINGHA	7/09	10:04A	JORDAN	7/09/76	Y	N	GUILTY			7/11/76	GUILTY	200	100			
574-20-2514 WUINHAGAK		MALE	E-BR H-BK	1/04/49	180	5-9		RES									
		D-76-06598-D CF02 - COMM FISH DURING CLOSED PERIOD								6521							
63208 BLODGETT	DILLINGHA	7/09	9:47A	BLODGETT	7/09/76	Y	N	GUILTY			7/11/76	GUILTY	1000	500			
574-12-4916 TOGIAK		MALE	E-BR H-BK	11/19/33	140	5-6		RES									
		D-76-06599-D 01 CF02 - CF CLOSED PERIOD								6522							
63208 BLODGETT	DILLINGHA	7/09	11:01A	BLODGETT	7/09/76	N	N	GUILTY			7/11/76	GUILTY	2000	2000			
574-09-7711 TOGIAK		MALE	E-BR H-BK	4/12/33	140	5-6		RES									
		D-76-06599-D 02 CF20 - COMM FISH W/O GEAR LICENSE IN POSS															
16056706 BLODGETT	DILLINGHA	7/09	11:00A	BLODGETT	7/11/76	N	N	GUILTY			7/11/76	GUILTY	15	15			
574-09-7711 TOGIAK		MALE	E-BR H-BK	4/12/33	140	5-6		RES									
		D-76-06599-D 03 CF22 - COMM FISH W/O LICENSE IN POSSESSION															
1605480A BLODGETT	DILLINGHA	7/09	11:00A	BLODGETT	7/11/76	N	N	GUILTY			7/11/76	GUILTY	15	15			
574-09-7711 TOGIAK		MALE	E-BR H-BK	4/12/33	140	5-6		RES									
		D-76-06599-D 04 CF25 - CF 2 TYPES OF GEAR AT SAME TIME															
6321L BLODGETT	DILLINGHA	7/09	11:00A	BLODGETT	7/11/76	N	N	SOLD			7/11/76	GUILTY	400				
574-09-7711 TOGIAK		MALE	E-BR H-BK	4/12/33	140	5-6		RES									
		D-76-06599-D 05 CF61 - FAILURE TO DISPLAY CORRECT ADFG ID															
6342 BLODGETT	DILLINGHA	7/09	11:00A	BLODGETT	7/11/76	N	N	GUILTY			7/11/76	GUILTY	25	25			
574-09-7711 TOGIAK		MALE	E-BR H-BK	4/12/33	140	5-6		RES									

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		D-76-06600-D 01 CF02 - COMM FISH DURING CLOSED PERIOD							6523						
63208	BLODGETT	DILLINGHA	7/09 11:41A	BLODGETT	7/09/76	N	N	GUILTY		7/11/76	GUILTY	500			
574-30-1603	QUINHAGAK		MALE E-BR H-BK	11/04/54	100	4-11		RES							
		D-76-06600-D 02 CF22 - COMM FISH W/O LICENSE IN POSSESSION													
1605480A	BLODGETT	DILLINGHA	7/09 11:00A	BLODGETT	7/11/76	N	N	GUILTY		7/11/76	GUILTY	15	15		
574-30-1603	QUINHAGAK		MALE E-BR H-BK	11/04/54	100	4-11		RES							
		D-76-06600-D 03 CF25 - CFCF 2 TYPES OF GEAR AT SAME TIME													
63311	BLODGETT	DILLINGHA	7/09 11:00A	BLODGETT	7/11/76	N	N	GUILTY		7/11/76	GUILTY	100			
574-30-1603	QUINHAGAK		MALE E-BR H-BK	11/04/54	100	4-11		RES							
		D-76-06604-D CF02 - CF CLOSED PERIOD													
63200	BLODGETT	DILLINGHA	7/13 12:20P	BLODGETT	7/13/76	N	N	N GLTY		9/27/76		DP			
574-09-6188	MANOKOTAK		FEMALE E-BR H-BK	7/01/32	130	5-2		RES							
		D-76-06605-D CF02 - CF CLOSED PERIOD													
63200	BLODGETT	DILLINGHA	7/13 12:35P	BLODGETT	7/13/76	Y	N	N GLTY		9/27/76		DP			
574-14-1734	MANOKOTAK		FEMALE E-BR H-BK	11/20/13	140	5		RES							
		D-76-06606-D CF01 - CF CLOSED WATERS													
63200	BLODGETT	DILLINGHA	7/13 12:35P	BLODGETT	7/13/76	Y	N	N GLTY		9/27/76		DP			
574-09-5829	TOGIAK		FEMALE E-BR H-BK	6/15/22	120	5-4		RES							
		D-76-06607-D CF01 - CF CLOSED WATERS													
39250A	BLODGETT	DILLINGHA	7/14 11:30A	BLODGETT	7/14/76	N	N	N GLTY		9/28/76	GUILTY	500	250		
574-50-5769	MANOKOTAK		MALE E-BR H-BK	5/10/57	135	5-6		RES							
		D-76-06608-D CF01 - CF CLOSED WATERS													
2	BLODGETT	DILLINGHA	7/14 12:05P	BLODGETT	7/14/76	N	N	GUILTY		7/18/76	GUILTY	2000	1000		
075-32-4969	SEATTLE	WA	MALE E-BR H-BL	7/23/30	230	6-2		N-RES							
		D-76-06609-D 01 CF01 - CF CLOSED WATERS													
2	BLODGETT	DILLINGHA	7/14 12:05P	BLODGETT	7/14/76	N	N			7/18/76		DIS	DIS		
000-00-0000	SEATTLE	WA	MALE E-BU H-BL	10/24/57	165	6		N-RES							
		D-76-06609-D 02 CF22 - COMM FISH W/O LICENSE IN POSS													
1605480A	BLODGETT	DILLINGHA	7/14 12:05P	BLODGETT	7/14/76	N	N	GUILTY		7/19/76	GUILTY	15	15		
000-00-0000	SEATTLE	WA	MALE E-BU H-BL	10/24/57	165	6		N-RES							
		D-76-06610-D 10 CF01 - CF CLOSED WATERS													
2	BLODGETT	DILLINGHA	7/14 12:45P	BLODGETT	7/14/76	N	N	N GLTY		9/29/76	GUILTY	400	200		
574-10-3445	PORTAGE CREEK		MALE E-BR H-BK	4/12/33	175	5-11		RES							
		D-76-06610-D 20 CF01 - CF CLOSED WATERS													
1	BLODGETT	DILLINGHA	7/14 12:45P	BLODGETT	7/14/76	N	N	N GLTY		9/29/76	N GLTY				
574-46-0659	KOLIGANEK		MALE E-BR H-BK	4/24/57	1[illegible]	5-4		RES							
		D-76-06612-D CF01 - CF CLOSED WATERS							6530						
2	BLODGETT	DILLINGHA	7/13 8:40P	HEIER	7/13/76	Y	N	N GLTY		9/07/76	GUILTY	1426	1426		
530-18-2987	BELLINGHAM	WA	MALE E-BU H-BR	4/19/25	160	6		N-RES							

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2		D-76-06614	7/14	CF01 - COMM FISH CLOSED WATER	HEIER	7/14/76	Y	N									
000-00-0000				MALE					N-RES								YAA
2 BLODGETT	DILLINGHA	D-76-06615-D	7/15	10:55P CF01 - CF CLOSED WATERS	HEIER	7/15/76	Y	N	GUILTY	6533	7/18/76	GUILTY	1000	500			
574-14-4341 EEK				MALE E-BR H-BK 1/07/41 145 5-2					RES								
16054804 BLODGETT	DILLINGHA	D-76-06616-D	7/15	4:55P CF22 - COMM FISH W/O A LICENSE	HEIER	7/15/76	N	N	GUILTY	6532	7/18/76	GUILTY	15	15			
574-24-6104 EKWOK				MALE E-BR H-BK 8/08/52 152 5-4					RES								
1605480A BLODGETT	DILLINGHA	D-76-06617-D	7/16	10:40A CF22 - COMM FISH W/O LICENSE IN POSSESSION	HEIER	7/16/76	N	N	GUILTY	6534	7/18/76	GUILTY	15	15			
539-50-3426 POTLATCH	ID			MALE E-BU H-BL 4/13/52 170 6-5					N-RES								
1605480A HEIER	DILLINGHA	D-76-06618-D	7/21	3:30P COMM FISH W/O LICENSE IN POSS	HEIER	7/21/76	N	N	GUILTY	6537	7/22/76	GUILTY	15	15			
574-14-6573 KWIGILLINGOK				MALE E-BR H-BK 3/12/44 130 5-4					RES								
2 HEIER	DILLINGHA	D-76-06619-D	7/21	4:40P CF01 - COMM FISH CLOSED AREA	HEIER	7/21/76	Y	N	NOLO	6538	7/25/76	GUILTY	1000	500			
553-50-9008 MILL VALLEY	CA			MALE E-BR H-BK 8/02/40 145 5-9					N-RES								
1605670E BLODGETT	DILLINGHA	D-76-06620-D	7/22	4:30P CF31 - CF W/O GEAR LICENSES PRESENT	BLODGETT	7/22/76	N	N	N GLTY	0298	9/27/76			DP			
574-28-1968 NEW STUYAHOK				MALE E-HZ H-BL 6/23/56 145 5-3					RES								
1605678E HEIER	DILLINGHA	D-76-06621-D	7/23	1:55P CF31 - C F W/O GEAR LICENSES PRESENT	HEIER	7/23/76	N	N	P GLTY	6539	9/27/76			DP			
574-28-1370 DILLINGHAM				FEMALE E-BR H-BK 11/19/55 155 5-1					RES								
6350E WELLMAN	NAKNEK	D-76-06407	6/29	20 CF01 - COMM FISH IN CLOSED WATER 11:04A	BRANTLEY	6/29/76	N	N	N GLTY		7/16/76	GUILTY		30			
564-40-5201 SAN FRANCISCO	CA			MALE E-BR H-BR 11/11/29 135 5-4					N-RES								
6350E WELLMAN	NAKNEK	D-76-06407	6/29	10 CF01 - COMM FISH IN CLOSED WATER 11:04A	SHARP	6/29/76	N	N	N GLTY		7/16/76	GUILTY	1000	1000			
548-46-7933 MONTEREY	CA			MALE E-BR H-BR 6/25/33 137 5-3					N-RES								
3 BLODGETT	DILLINGHA	D-76-06626-D	8/03	4:30P CF25 - ANCHORING DRIFT GILL NET	HEIER	8/03/76	Y	N	N GLTY	0299	10/26/76	GUILTY	500	89			
574-07-8928 QUINHAGAK				MALE E-BR H-BK 7/18/12 150 5-8					RES								
6350E WELLMAN	NAKNEK	D-76-06406	6/29	20 CF01 - COMM FISH CLOSED WATER 3:00P	SHARP	7/01/76	N	N	N GLTY		7/15/76	GUILTY	1000		30		
545-92-2651 BELLINGHAM	WA			MALE E-BU H-GR 11/01/32 180 5-9					N-RES								
6350E WELLMAN	NAKNEK	D-76-06406	6/29	10 CF01 - COMM FISH CLOSED WATER 3:00P	SHARP	7/01/76	N	N	N GLTY		7/15/76	GUILTY	1000		30		
547-58-5725 SOLANA BEACH	CA			MALE E-BR H-BR 2/08/33 175 5-11					N-RES								

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		D-76-06405 20 CF01 - COMM FISH CLOSED WATER												
6350F WELLMAN 562-50-5875 MONTEREY	NAKNEK CA	7/10 5:50P MALE	DYKEMA E-BR H-BR	9/27/29 180 6	7/10/76 N	N N-RES		7/17/76	N GLTY					
		D-76-06405 10 CF01 - COMM FISH CLOSED WATER												
6350F WELLMAN 000-00-0000 MONTEREY	NAKNEK CA	7/10 5:50 MALE	DYKEMA E-BR H-BK	8/30/39 165 5-9	7/10/76 N	N N GLTY N-RES		7/17/76	N GLTY					
		D-76-06628-D 01 CF25 - ANCHORING DRIFT GILL NET					6544							
NEKETA 524-5716 TWIN HILLS	DILLINGHA 	8/20 12:50P MALE	NEKETA E-BR H-BK	7/17/54 150 5-7	8/20/76 Y	Y NOLO RES		8/22/76	GUILTY	1000	500			
		D-76-06628-D 02 CF61 - COMM FISH W/O ADFG PLATE					6544							
055204 NEKETA 574-24-5716 TWIN HILLS	DILLINGHA 	8/20 12:50P MALE	NEKETA E-BR H-BK	7/17/54 150 5-7	8/20/76 N	Y NOLO RES		8/22/76	GUILTY	25	25			
		D-76-06404 20 CF01 - COMM FISH CLOSED WATER												
6350F WELLMAN 562-20-9054 SAN DIEGO	NAKNEK CA	7/10 5:30P MALE	DYKEMA E-BU H-BR	1/22/24 170 5-6	7/13/76 N	N N GLTY N-RES		7/17/76	N GLTY					
		D-76-06404 10 CF01 - COMM FISH CLOSED WATER												
6350F WELLMAN 570-42-3255 SAN CARLOS	NAKNEK CA	7/10 5:30P MALE	DYKEMA E-BR H-BR	1/30/32 200 6	7/13/76 N	N N GLTY N-RES		7/17/76	N GLTY					
		D-76-06403-K 20 CF01 - CF CLOSED WATERS												
6350F WELLMAN 543-68-8971 TROUTDALE	NAKNEK OR	6/29 2:45P MALE	SHARP E-GN H-BR	9/30/56 160 5-11	6/29/76 N	N NOLO N-RES		7/01/76	GUILTY	1000	1000			
		D-76-06403-K 10 CF01 - CF CLOSED WATERS												
6350F WELLMAN 543-22-7666 TROUTDALE	NAKNEK OR	6/29 2:45P MALE	SHARP E-HZ H-BR	1/03/27 175 5-9	6/29/76 N	N N-RES		7/03/76	N GLTY	DIS				
		D-76-06402-K 20 CF02 - CF CLOSED PERIOD												
6320E WELLMAN 574-52-0925 MONTEREY	NAKNEK CA	6/29 11:23P MALE	SHARP E-BR H-BR	7/29/37 175 5-9	6/29/76 N	N GUILTY N-RES		7/01/76	GUILTY	500				
		D-76-06402-K 10 CF02 - CF CLOSED PERIOD												
6320F WELLMAN 574-52-0924 MONTEREY	NAKNEK CA	6/29 11:23P MALE	SHARP E-BR H-BR	4/09/04 165 5-4	6/29/76 N	N GUILTY N-RES		7/01/76	GUILTY	500				
		D-76-06401-K 20 CF01 - COMM FISH CLOSED AREA												
6350F WELLMAN 544-56-3067 ASTORIA	NAKNEK OR	7/05 3:15 MALE	RODGERS E-BU H-BL	3/03/30 155 5-10	7/05/76 N	N N GLTY N-RES		7/07/76	GUILTY	500		30		
		D-76-06401-K 10 CF01 - COMM FISH CLOSED AREA												
6350F WELLMAN 543-20-0199 ASTORIA	NAKNEK OR	7/05 3:15P MALE	RODGERS E-BR H-BR	8/08/28 160 5-6	7/05/76 N	N NOLO N-RES		7/07/76	GUILTY	1000	1000	30		
		D-76-06400-K 20 CF01 - COMM FISH CLOSED AREA												
6350F WELLMAN 553-32-4302 BAYNES CREEK	NAKNEK CA	7/04 12:30P MALE	RODGERS E-GN H-BL	8/16/28 190 5-8	7/04/76 N	N NOLO N-RES		7/07/76	GUILTY			30		

VIOLATION CODE	COMPLAINT SIGNED BY	VIOLATION LOCATION	VIOLATION DATE TIME	CITED BY	CITED DATE	SEIZED EQ	COP	PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	NO LIC REV
		D-76-06400-K 10 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 545-26-7675 SAN RAFAEL	NAKNEK CA	7/04 12:30P MALE	RODGERS F-BR H-BR	7/03/21	7/04/76 Y 180 5-7	N	NOLO N-RES		7/07/76	GUILTY		30			
		D-76-06399-K 20 CF01 - COMM FISH CLOSED WATER														
E WELLMAN 569-58-6711 SAN PEDRO	NAKNEK CA	7/05 8:50A MALE	REDSTON F-BR H-BR	5/26/34	7/05/76 N 180 5-7	N	GUILTY N-RES		7/07/76	GUILTY	1000	1000			
		D-76-06399-K 10 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 546-70-9793 SAN PEDRO	NAKNEK CA	7/05 8:50A MALE	REDSTON F-BR H-BR	10/08/43	7/05/76 N 165 5-5	N	GUILTY N-RES		7/07/76	GUILTY	500		30		
		D-76-06398-K 20 CF01 - COMM FISH CLOSED WATER														
6320E WELLMAN 566-34-6431 MONTEREY	NAKNEK CA	7 10 11:50A MALE	BLODGETT F-BR H-BR	6/02/21	7/10/76 N 155 5-6	N	NOLO N-RES		7/12/76	GUILTY	500	500	30		
		D-76-06398-K CF01 - COMM FISH CLOSED WATER														
6320E WELLMAN 558-68-9193 MONTEREY	NAKNEK CA	7/10 11:50A MALE	BLODGETT F-BR H-BR	12/20/38	7/10/76 N 165 5-6	N	NOLO N-RES		7/12/76	GUILTY	500	500	30		
		D-76-06396-K 20 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 557-64-2004 SAN PEDRO	NAKNEK CA	7/10 9:45P MALE	DYKEMA F-BR H-BR	8/08/39	7/10/76 N 190 5-7	N	GUILTY N-RES		7/13/76	GUILTY	500	500	30		
		D-76-06396-K 10 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 092-14-5439 SAN PEDRO	NAKNEK CA	7/10 9:45P MALE	DYKEMA F-BR H-BR	3/06/22	7/10/76 N 195 5-9	N	GUILTY N-RES		7/12/76	GUILTY	1000	1000	30		
		D-76-06395-K 20 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 574-32-3343 HAINES	NAKNEK MALE	7/06 9:42P F-BR H-BR	SHARP 11/01/37	160 5-11	7/06/76 N	N	GUILTY RES		7/09/76	N GLTY	DIS				
		D-76-06395-K 10 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 574-09-0874 HAINES	NAKNEK MALE	7/06 9:42P F-BR H-BR	THOMPSON 10/20/31	175 5-10	7/06/76 N	N	N GLTY RES		7/11/76	GUILTY	1000				
		D-76-06394 20 CF01 - COMM FISH IN CLOSED WATER														
6350F WELLMAN 534-62-0652 SEATTLE	NAKNEK WA	7/03 12:40 MALE	REDSTON F-BR H-BR	8/05/54	7/07/76 N 200 5-11	N	N GLTY N-RES		7/14/76	GUILTY	500	500	30		
		D-76-06394 10 CF01 - COMM FISH CLOSED WATER														
6350F WELLMAN 532-22-2254 SEATTLE	NAKNEK WA	7/03 12:40P MALE	REDSTON F-BR H-BR	8/05/27	7/03/76 N 210 5-11	N	N GLTY N-RES		7/14/76	GUILTY	1000	1000	30		
		D-76-06393-K 20 CF01 - COMM FISH CLOSED AREA														
6350F WELLMAN 542-36-7239 ASTORIA	NAKNEK OR	6/29 3:00P MALE	SHARP F-BR H-BR	1/12/37	6/29/76 N 175 6	N	NOLO N-RES		7/01/76	GUILTY	1000	1000	30		
		D-76-06393-K CF01 - COMM FISH CLOSED AREA														
6350F WELLMAN 542-60-7175 ASTORIA	NAKNEK OR	6/29 3:00P MALE	SHARP F-BR H-BR	7/07/52	6/29/76 N 190 6	N	N GLTY N-RES				DIS				

VIOLATION CODE	SIGNED BY	COMPLAINT LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG	COP	PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	NO LIC SCV
		D-76-06392-K 20 CF01 - COMM FISH CLOSED AREA															
6350F	WELLMAN	NAKNEK	7/05	8:50	REDSTON	7/05/76	N		N	GUILTY		7/07/76	GUILTY	500		30	
397-40-1216	KENAI			MALE	E-BR H-BR	1/05/41	180	5-7		RES							
		D-76-06392-K 10 CF01 - COMM FISH CLOSED AREA															
6350F	WELLMAN	NAKNEK	7/05	8:50A	REDSTON	7/05/76	N		N	GUILTY		7/09/76	GUILTY	1000	1000	30	
531-44-2482	KIRKLAND	WA		MALE	E-HZ H-BR	3/19/46	175	5-11		N-RES							
		D-76-06391-K 20 CF01 - COMM FISH CLOSED AREA															
6350F	WELLMAN	NAKNEK	6/29	2:43P	SHARP	6/29/76	N		N	NOLO		7/02/76	N GLTY				
559-05-1116	PITTSBORG	CA		MALE	E-BR H-BR	6/21/20	185	5-6		N-RES							
		D-76-06391-K 10 CF01 - COMM FISH CLOSED AREA															
6350F	WELLMAN	NAKNEK	6/29	2:43P	SHARP	6/30/76	N		N	NOLO		7/02/76	N GLTY				
000-00-0000	CONCORD	CA		MALE	E-BU H-BR	10/01/52	160	5-9		N-RES							
		D-76-06390-K 20 CF01 - COMM FISH CLOSED WATERS															
6350F	WELLMAN	NAKNEK	6/29	11:20A	SHARP	7/02/76	N		N	NOLO		7/02/76		DIS			
535-18-4339	SEATTLE	WA		MALE	E-BU H-BR	9/06/2[illegible]	200	5-11		N-RES							
		D-76-06390-K 10 CF01 - COMM FISH CLOSED WATERS															
6350F	WELLMAN	NAKNEK	6/29	11:20A	SHARP	7/02/76	N		N	GUILTY		7/02/76	GUILTY	1000	1000		
536-12-4132	SEATTLE	WA		MALE	E-BR H-GR	9/21/11	200	6-1		N-RES							
		D-76-06389-K 20 CF01 - COMM FISH CLOSED WATERS															
6350F	WELLMAN	NAKNEK	6/29	3:08P	SHARP	7/01/76	N		N	NOLO		7/01/76	GUILTY	1000	1000		
542-60-4830	ASTORIA	OR		MALE	E-BR H-BR	9/14/49	215	6-2		N-RES							
		D-76-06389-K 10 CF01 - COMM FISH CLOSED WATERS															
6350F	WELLMAN	NAKNEK	6/29	3:08P	SHARP	7/01/76	N		N	NOLO		7/01/76	GUILTY				
542-52-7557	ASTORIA	OR		MALE	E-BU H-BR	4/01/48	205	6-6		N-RES							
		D-76-06387-K 20 CF01 - COMM FISH CLOSED WATER															
6350F	MAYBERRY	NAKEK	7/12	3:35P	DYKEMA	7/12/76	N		N	GUILTY		7/14/76	GUILTY	500		30	
000-00-0000	BELLINGHAM	WA		MALE	E-BR H-BR	9/11/43	150	5-7		N-RES							
		D-76-06387-K CF01 - COMM FISH CLOSED WATER															
6350F	MAYBERRY	NAKNEK	7/12	3:45P	DYKEMA	7/12/76	N		N	GUILTY		7/14/76	GUILTY	1000	1000	30	
534-40-8027	MERCER IS	WA		MALE	E-BR H-BR	9/11/43	145	5-7		N-RES							
		D-76-06386 20 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	6/29	11:07A	BRANTLEY	6/29/76	N		N	N GLTY		7/02/76	N GLTY	DIS			
000-00-0000	FREEDOM	ME		MALE	E-BU H-BR	6/05/54	155	5-7		N-RES							
		D-76-06386 10 CF01 - COMM FISH IN CLOSED WATER															
6350F	WELLMAN	NAKNEK	6/29	11:07A	BRANTLEY	6/29/76	N		N	N GLTY		7/02/76	N GLTY	DIS			
545-58-9058	FT BRAGG	CA		MALE	E-BR H-BR	7/08/48	195	5-6		N-RES							
		D-76-06384-K 20 CF01 - COMM FISH CLOSED WATER															
6350F	WELLMAN	NAKNEK	7/05	8:50A	BRANTLEY	7/05/76	N		N	GUILTY		7/07/76	GUILTY	1000	1000	30	
545-72-4243	SAN PEDRO	CA		MALE	E-BR H-BR	1/01/2[illegible]	180	5-6		N-RES							

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		D-76-06384-K 10 CF01 - COMM FISH CLOSED WATER																
6350F WELLMAN	NAKNEK		7/05	8:00A	BRANTLEY	7/05/76	N	N	GUILTY			7/07/76	GUILTY	1000	1000	30		
555-28-6507 SAN PEDRO		CA	MALE	E-GN H-BR	6/08/23	160	5-7		N-RES									
		D-76-06383-K CF31 - ILLEGAL OPERATION OF SET NETS																
6331G WELLMAN	NAKNEK		7/04	2:00P	THOMPSON	7/04/76	N	N	HOLD			7/07/76	GUILTY	1167	1167			
559-26-3653 ANCHORAGE			MALE	E-BR H-BR	4/06/24	165	5-9		RES									
		D-76-06382-K CF20 - ILLEGAL OPERATION OF SET NET																
6331G WELLMAN	NAKNEK		7/04	2:00P	THOMPSON	7/04/76	N	N	HOLD			7/07/76	GUILTY	1167	1167			
000-00-0000 ANCHORAGE			MALE	E-BU H-GR	6/23/10	160	5-10		RES									
		D-76-06381-K CF61 - UNMARKED NET GEAR																
3980H WELLMAN	NAKNEK		6/29	3:30P	THOMPSON		N	Y	GUILTY			6/30/76	GUILTY	200		30		
275-20-5091 ANCHORAGE			MALE	E-GN H-BR	6/10/27	175	5-8		RES									
		D-76-06379 20 CF01 - COMM FISH CLOSED WATER																
6350F WELLMAN	NAKNEK		6/29	1:00P	THOMPSON	6/29/76	N	N	N GLTY			7/02/76	N GLTY	DIS				
565-35-9045 SAN PEDRO		CA	MALE	E-GN H-BR	9/22/52	170	6-1		N-RES									
		D-76-06379 10 CF01 - COMM FISH CLOSED WATER																
6350F WELLMAN	NAKNEK		6/29	1:00P	THOMPSON	6/29/76	N	N	N GLTY	1000		7/02/76	GUILTY	500	500			
566-88-2062 SAN PEDRO		CA	MALE	E-BU H-BR	12/28/42	190	6-3		N-RES									
		D-76-06378-K 10 CF02 - CF CLOSED PERIOD																
6320E WELLMAN	NAKNEK		6/29	12:30A	THOMPSON		N	N	GUILTY			7/01/76	GUILTY	500	500			
574-14-6578 LEVLOCK			MALE	E-BR H-BR	2/06/46	185	5-9		RES									
		D-76-06378-K 02 CF61 - UNMARKED BOUY																
6334A WELLMAN	NAKNEK		6/30	12:30A	THOMPSON	6/30/76	N	N	GUILTY			7/01/76	GUILTY	100	100			
574-18-2326 ILIAMNA			MALE	E-BR H-BK	12/06/41	140	5-4		RES									
		D-76-06378-K 01 CF02 - CF CLOSED PERIOD																
6320E WELLMAN	NAKNEK		6/30	12:30A	THOMPSON	6/30/76	N	N	GUILTY			7/01/76	GUILTY	500	500			
574-18-2326 ILIAMNA			MALE	E-BR H-BK	12/06/41	140	5-4		RES									
		D-76-06377 20 CF01 - COMM FISH IN CLOSED WATER																
6350E WELLMAN	NAKNEK		7/10	3:05P	THOMPSON	7/10/76	N	N	N GLTY			7/15/76	N GLTY					
562-58-2326 SEASIDE		CA	MALE	E-BR H-BR	7/07/44	180	5-7		N-RES									
		D-76-06377 10 CF01 - COMM FISH IN CLOSED WATER																
6350E WELLMAN	NAKNEK		7/10	3:05P	THOMPSON	7/10/76	N	N	N GLTY			7/15/76	N GLTY					
570-56-2786 MONTEREY		CA	MALE	E-GN H-GR	9/15/48	180	5-11		N-RES									
		D-76-06376 20 CF01 - COMM FISH CLOSED WATER																
6350E WELLMAN	NAKNEK		7/10	3:05P	THOMPSON	7/10/76	N	N	N GLTY			7/16/76	N GLTY					
570-58-9684 SAN PEDRO		CA	MALE	E-BU H-BR	6/21/25	170	5-10		N-RES									
		D-76-06376 10 CF01 - COMM FISH CLOSED WATER																
6350E WELLMAN	NAKNEK		7/10	3:05P	THOMPSON	7/10/76	N	N	N GLTY			7/16/76	N GLTY					
000-00-0000 SEASIDE		CA	MALE	E-BR H-BR	9/22/22	180	5-6		N-RES									

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		D-76-06375 20 CF01 - COMM FISH IN CLOSED WATER														
6350E	WELLMAN	NAKNEK	7/05	3:15A	THOMPSON	7/07/76	N	N	N	GLTY	7/16/76 GUILTY	500				
000-00-0000	CARMEL	CA		MALE	E-BR H-BR	2/20/53	160	5-7		N-RES						
		D-76-06375 10 CF01 - COMM FISH IN CLOSED WATER														
6350E	WELLMAN	NAKNEK	7/05	3:15P	THOMPSON	7/07/76	N	N	N	GLTY	7/16/76 GUILTY	2000				
552-16-2256	MONTEREY	CA		MALE	E-BR H-BR	9/17/05	160	5-8		N-RES						
		D-76-06288-V CF02 - FAIL TO REMOVE LEAD CLOSED PERIOD														
24332B	EAMES	VALDEZ	7/17	5:30P	EAMES	7/18/76	N	N	N	GUILTY	7/24/76 GUILTY	200	100			
574-16-9079	FAIRBANKS			MALE	E-BU H-BR	9/15/48	165	5-10		RES						
		D-76-06285-V CF01 - COMM FISH CLOSED AREA														
24330A	SHORT	VALDEZ	6/23	9:20A	SHORT	6/23/76	Y	Y		GUILTY	6/23/76 GUILTY	500	500			
537-48-5495	BLAINE	WA		MALE	E-BU H-BR	9/03/47	200	6		N-RES						
		D-76-06284-V CF01 - COMM FISH CLOSED AREA									7012					
24330A	SHORT	VALDEZ	6/18	6:15P	EAMES	6/18/76	Y	Y		GUILTY	6/19/76 GUILTY	500	500			
704-16-9572	WHITTIER			MALE	E-BU H-BR	11/14/11	135	5-10		RES						
		D-76-06206-R CF20 - C/F W/O LONG LINE LICENSE														
1605560E	AMES	CORDOVA	7/20	10:00A	EAMES	9/10/76	N	N		GUILTY	9/10/76 GUILTY	100	50			
568-80-9872	CORDOVA			MALE	E-BR H-BR	6/06/52	170	6-1		N-RES						
		D-76-06202-R 02 CF21 - COMM FISH W/O VESS L LICENSE														
5490A	JONES	CORDOVA	6/20		JONES	8/16/76	N	N		GUILTY	8/16/76 GUILTY	250	250			
574-20-4399	CORDOVA			MALE	E-BU H-BR	3/26/50	170	5-11		N-RES						
		D-76-06202-R 01 CF22 - COMM FISH W/O LICENSE														
5480A	JONES	CORDOVA	6/20		JONES	8/13/76	N	N		GUILTY	8/16/76 GUILTY	250	250			
574-20-	CORDOVA			MALE	E-BU H-BR	3/26/50	170	5-11		N-RES						
		D-76-06201-R 01 CF20 - COMM FISH W/O GEAR LICENSE														
5570	JONES	CORDOVA	7/27		JONES	8/12/76	N	N		GUILTY	8/13/76 GUILTY	100	100			
574-20-2021	CORDOVA			MALE	E-BU H-BR	11/15/49	154	5-8		RES						
		D-76-06201 02 CF21 - COMM FISH W/O VESSEL LICENSE														
5490	JONES	CORDOVA	7/27		JONES	8/13/76	N	N		GUILTY	8/13/76 GUILTY	100	100			
574-20-2021	CORDOVA			MALE	E-BU H-BR	11/15/49	154	5-8		RES						
		D-76-06200-R CF01 - COMM FISH CLOSED WATER														
0	JONES	CORDOVA	7/28	2:00P	JONES	8/05/76	Y	N		GUILTY	8/05/76 GUILTY	1500	500			
534-20-2176	CORDOVA			MALE	E-BU H-BR	2/28/28	175	6		N-RES						
		D-76-06199-R CF61 - COMM FISH UNMARKED GEAR														
320590B	JONES	CORDOVA	7/28		JONES	8/05/76	N	N		GUILTY	8/05/76 GUILTY	1000	500			
534-34-6078	CORDOVA			MALE	E-BR H-BR	3/23/39	190	5-11		N-RES						
		D-76-06198-R CF21 - COMM FISH W/O VESSEL LICENSE														
1605490	JONES	CORDOVA	6/29		JONES	8/04/76	N	N		GUILTY	8/04/76 GUILTY	50	50			
523-16-5317	CORDOVA			FEMALE	E-BU H-BL	11/02/48	120	5-6		N-RES						

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		D-76-06196-R		CF25 - C/F ANCHORED GILL NET						4066								
3 JONES		CORDOVA	7/07	12:00	MILLER	7/07/76	N	N	N GLTY	500		8/18/76	GUILTY	250	250			
574-10-0793 CORDOVA				MALE	E-BR H-BR	4/22/32	200	5-10		PFS								
		D-76-06190-R		CF11 - COMM FISH W/O L F PERMIT														
43140 ROSCOVIOUS		CORDOVA	5/17		ROSCOVIOUS	6/17/76	N	N	N GLTY			10/04/76	GUILTY	2500	1500			
535-56-1877 BLAINE		WA		MALE	E-BU H-BR	2/10/47	175	6		W-RES								
		D-76-06189-R		CF20 - COMM FISH W/O CRAB LICENSE														
1605570 JONES		CORDOVA	5/17		JONES	5/17/76	N	N	GUILTY			6/16/76	GUILTY	50	50			
027-34-0557 CORDOVA				MALE	E-BU H-BL	3/15/28	200	6		RES								
		D-76-06186-R		CF01 - COMM FISH CLOSED WATER														
24350A JONES		CORDOVA	5/31	7:55A	JONES	6/10/76	N	N	N GLTY			6/19/76	N GLTY					
574-16-4280 CORDOVA				MALE	E-BR H-BR	2/21/47	160	5-9		RES								
		D-76-06185-R		CF01 - COMM FISH CLOSED WATER														
24350A JONES		CORDOVA	5/31	7:55A	JONES	6/10/76	N	N	N GLTY			6/16/76	GUILTY	500	250			
574-22-9285 CORDOVA				MALE	E-BU H-BR	4/16/52	160	5-9										
		D-76-06184-R		CF22 - COMM FISH W/O LICENSE						8120								
1605480 JONES		CORDOVA	5/21		JONES	6/09/76	N	N	GUILTY			6/17/76	GUILTY	150	150			
564-40-2415 CORDOVA				MALE	E-BR H-BR	2/20/22	180	5-10		RES								
		D-76-06183-R	02	CF20 - NO DRIFT GILL NET LICENSE														
1605490 JONES		CORDOVA	5/19		JONES	6/09/76	N	N	GUILTY			6/17/76	GUILTY	50	50			
535-30-3067 CORDOVA				MALE	E-BU H-BR	3/11/36	200	5-10		RES								
		D-76-06183-R	01	CF21 - COMM FISH W/O VESSEL LICENSE						8119								
1605490J ONES		CORDOVA	5/18		JONES	6/03/76	N	N	GUILTY			6/17/76	GUILTY	50	50			
535-30-3067 CORDOVA				MALE	E-BU H-BR	3/11/36	200	5-10		RES								
		D-76-06182-R		CF22 - TAKE KELP W/O LICENSE														
16054804 ROSCOVIUS		CORDOVA	4/22		ROSCOVIUS	5/18/76	N	N	N GLTY			6/21/76	N GLTY					
531-58-0364 CORDOVA				MALE	E-BR H-BR	1/04/57	150	5-6		RES								
		D-76-06104-M		CF42 - COMM FISH IN UNREG AREA														
35020C JORDAN		SEWARD	3/13		JORDAN	3/22/76	N	N	N GLTY			6/30/76	GUILTY	300	100			
019-32-9929 SEWARD				MALE	E-BU H-BR	9/09/44	175	5-8		RES								
		D-76-06103-M		CF11 - COMM FISH -- NO LIMITED ENTRY														
1643140A JORDAN		SEWARD	3/19		JORDAN	3/22/76	Y	N	GUILTY			6/29/76	GUILTY	300	300			
574-18-7362 SEWARD				MALE	E-BU H-BR	1/26/49	150	5-11		RES								
		D-76-06054-R		CF61 - IMPROPER IDENT TAGGED CRAB GEAR														
535050B ROSCOVIUS		CORDOVA	4/16	5:00P	ROSCOVIUS	4/26/76	N	Y	GUILTY			4/27/76	GUILTY	500	250			
539-12-7031 CORDOVA				MALE	E-BR H-BR	10/20/2[illegible]	200	6		RES								
		D-76-06053-R		CF61 - IMPROPER GEAR IDENTIFICATION														
35050 HALL		HOMER	2/23	12:15P	HALL	3/03/76	N	Y	N GLTY			5/04/76					DIS	
576-54-9531 CORDOVA				MALE	E-BU H-BL	7/09/40	175	5-10		PFS								

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG	BOP	USC NC TRAIL PLEA	BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	NO LIC REV
		D-76-06027-H			CF61 - KING CRAB POTS W/O MARKINGS												
340508 THORSRUD		HOMER	9/04	8:30A	THORSRUD	10/11/76		Y	NOLO		10/13/76	GUILTY	100	100			
470-56-2578 HOMER				MALE	E-BU H-BR	6/06/43	210	5	RES								
		D-76-06011-H			CF21 - COM FISH W/O VESSEL LICENSE												
1605490A HALL		HOMER	1/15		HALL	5/24/76	N	N	NOLO		6/17/76	GUILTY	200	200			
574-30-2573 HOMER				MALE	E-BR H-BR	11/01/55	185	5-10	RES								
		D-76-06010-H			CF20 - COM FISH W/O GEAR LIC												
1605630 HALL		HOMER	1/15		HALL	5/24/76	N	N	NOLO		6/17/76	GUILTY	200	200			
574-30-2573 HOMER				MALE	E-BR H-BR	11/01/55	185	5-10	RES								
		D-76-06009-H			CF22 - COMM FISH W/O LICENSE												
1605480 HALL		HOMER	1/15		HALL	5/24/76	N	N	NOLO		6/17/76	GUILTY	500	300			
574-30-2573 HOMER				MALE	E-BR H-BR	11/01/55	185	5-10	RES								
		D-76-06007-H	02		CF22 - COM FISH W/O LICENSE												
1605480A HALL		HOMER	2/07		HALL	5/11/76	N	N	GUILTY		5/11/76	GUILTY	200	100			
451-56-7545 HOMER				MALE	E-BU H-BR	2/08/39	170	6	RES								
		D-76-06007-H	02		CF20 - TRAWL W/O LICENSE												
1605610 HALL		HOMER	2/07		HALL	5/11/76	N	N	GUILTY		5/11/76	GUILTY	200	100			
451-56-7545 HOMER				MALE	E-BU H-BR	2/08/39	170	6	RES								
		D-76-06007-H	01		CF21 - COM FISH W/O VESSEL LICENSE												
1605490A HALL		HOMER	2/07		HALL	5/11/76	N	N	GUILTY		5/11/76	GUILTY	200	100			
451-56-7545 HOMER				MALE	E-BR H-BR	2/08/39	170	6	RES								
		D-75-06203-K			CF01 - C/F CLOSED AREA												
39250A BRANTLEY		NAKNEK	7/02	1:30P	BRANTLEY	7/02/75	N	N	N GLTY	1500						DIS	
407-20-9475 BELLINGHAM	WA			MALE	E-BR H-BR	9/19/26	185	6	N-RES								
		D-75-06144-X	02		CF42 - COMM FISH W/O CRAB REGISTRATION												
34030D FRANCE		KENAI	12/06		THOMPSON	12/31/75	N	N	GUILTY		1/02/76	GUILTY	4000	2500			
000-00-0000 ANCHORAGE				MALE	E-BR H-BR	2/13/42	165	5-10	RES								
		D-75-06144-X	01		CF02 - C/F CLOSED SEASON												
34010D FRANCE		KENAI	11/23		THOMPSON A	12/31/75	N	N	GUILTY		1/02/76		1000	1000			
000-00-0000 ANCHORAGE				MALE	E-BK H-BK	2/13/42	165	5-10	RES								
		D-75-06137-H			CF01 - C/F CLOSED WATERS												
39290A DYKEMA		HOMER	8/11	10:00A	DYKEMA	8/11/75	N	N	NOLO	500	8/20/75	GUILTY	100				
574-16-5909 ANCHORAGE				MALE	E-BU H-BR	7/12/49	180	5-9	RES								
		D-75-06136-H			CF01 - COMM FISHING CLOSED WATERS												
C DYKEMA		HOMER	8/11	10:00A	DYKEMA	8/11/75	N	N		500	9/05/75	GUILTY	100				
554-64-2127 HOMER				MALE	E-BR H-BR	11/10/45	170	5-2	N-RES								
		D-75-06135-H			CF01 - C/F CLOSED WATERS												
C DYKEMA		HOMER	8/11	10:00A	DYKEMA	8/11/75	N	N	N GLTY	500	9/05/75	GUILTY	100	100			
522-00-5100 VANCOUVER	WA			MALE	E-GN H-BR	3/31/54	170	6	N-RES								

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	C DYKEMA	D-75-06134-H HOMER	8/11	10:00A	CF01 - C/F CLOSED WATERS DYKEMA	8/11/75	Y	N			9/05/75	GUILTY	1000	1000			
559-20-6049	HOMER				MALE E-BR H-BR 8/28/23 150 5-9				RES								
	J J JORDAN	D-75-06096-X KENAI	7/18	9:15A	CF25 - DRIFT NET FIXED TO SHORE CARPENTER	7/19/75	N	N N	GLTY		5/03/76	N GLTY					
369-30-9705	KENAI				MALE E-BU H-BR 4/14/35 180 5-9				RES								
		D-75-06037 7/19			CF01 - DRIFT GILL NETTING CLOSED WATER THOMPSON	7/19/75			NOLO			GUILTY	250				
000-00-0000																	
32020C	ROBERTSON	D-75-03342-H HOMER	9/27		CF42 - FISH WITH UNREG VESSEL FOR CRAB ROBERTSON	12/05/75	N	N N	GLTY		4/13/76	GUILTY			5	5	
574-18-8267	HOMER				FEMALE E-HZ H-BR 12/01/50 130 5-5				RES								
34020C	ROBERTSON	D-75-03341-H HOMER	9/26		CF42 - FISH CRAB W/UNREGISTERD VESSEL ROBERTSON	12/05/75	N	N N	GLTY		5/11/76	GUILTY	20	20			
530-42-3050	HOMER				MALE H-BR 10/11/51 175 6-1				RES								
32330	ROBERTSON	D-75-02895-H 01 HOMER	10/09	12:30P	CF61 - IMPROPER MARKED DUNGENESS GEAR ROBERTSON	1/02/76	N	Y	NOLO		1/02/76	GUILTY	300	100			
510-20-3123	KASILOF				MALE E-BU H-BL 4/15/28 160 5-11				RES								
32330	HALL	D-75-02891-H HOMER	9/12	10:00A	CF61 - IMPROPER IDENTIFICATION ON GEAR HALL	9/18/75	N	Y	NOLO		1/12/76	GUILTY	100	100			
574-30-2573	HOMER				MALE E-BR H-BR 11/01/55 175 5-11				RES								
32330	HALL	D-75-02890 HOMER	10/01	2:00P	CF61 - CRAB POTS NOT PROPERLY NUMBERED HALL	10/07/75	N	Y	GUILTY		10/07/75	GUILTY					
261-64-6072	HOMER				MALE E-BR H-BR 11/19/41 130 5-8				RES								
39250A	BLODGETT	D-75-02002-K NAKNEK	7/07	4:30P	CF01 - C F CLOSED AREA BLODGETT	7/10/75	N	N N	GLTY						DIS	DIS	DIS DIS
539-40-3068	KODIAK				MALE E-BU H-BR 1/08/43 160 5-8				RES								
39250A	GILSON P	D-75-01930-D NAKNEK	7/07		CF02 - C/F CLOSED PERIOD SAVAGE D	7/07/75	N	N N	GLTY		12/12/75	N GLTY		DIS			
574-18-2909	SOLDOTNA				MALE E-BR H-BR 11/05/43 190 6				RES								
39250A	BLODGETT	D-75-01929-D NAKNEK	7/07		CF01 - C/F CLOSED AREA SAVAGE D	7/07/75	Y	N N	GLTY	250	12/12/75	N GLTY		DIS			
574-24-7466	SOLDOTNA				MALE E-BR H-BK 10/07/52 160 5-9				RES								
39240A	CORNWALL	D-75-01878-K 02 NAKNEK	7/07	9:00A	CF25 - OVERLIMIT OF GEAR CORNWALL	7/08/75	Y	Y N	GLTY		10/21/75						
050-46-3744	CITY ISLAND	NY			MALE E-BR H-BR 6/10/47 190 6				N-RES								
39250A	CORNWALL	D-75-01878-K 01 NAKNEK	7/07	9:00A	CF01 - C F CLOSED AREA CORNWALL	7/08/75	Y	Y N	GLTY	1500	10/21/75			1500			
050-46-3744	CITY ISLAND	NY			MALE E-BR H-BR 6/10/47 190 6				N-RES								

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		D-75-01657-X			CF61 - C/F UNMARKED BEACH SITE												
213348 JORDAN			7/07		CARPENTER G	7/07/75	N	N	N GLTY		7/09/75	N GLTY		DIS			
539-58-6993 SOLDOTNA				MALE	E-BU H-BL	11/05/5[illegible]	155	5-8	RES								
		D-75-01565-I			CF01 - NET OBS ENTIRE WIDTH OF STREAM					N/A							
39906 RODGERS	ANIAK		9/23	2:00P	RODGERS	9/23/75	N	Y	N GLTY		1/15/76	GUILTY		SIS			
228-44-8842 SLEETMUTE				MALE	E-BU H-BR	2/03/32	150	6-1	RES								
		D-75-00585-H			CF01 - C/F CLOSED WATERS												
C DYKEMA	HOMER		8/12		DYKEMA	8/12/75			N GLTY			GUILTY CIVL					
020-28-6873 HOMER				MALE	E-BR H-BR	3/27/39	160	5-7	RES								
		D-75-00506-D 03			CF01 - CF CLOSED WATERS					6501							
39290A BLODGETT	DILLINGHA		8/19	1:20P	BLODGETT	8/19/75	Y	N	N GLTY		9/28/76	N GLTY		DIS			
574-24-5539 CLARKS POINT				MALE	E-BR H-BK	7/18/52	115	5-3	RES								
		D-75-00506-D 02			CF11 - OPERATING GEAR W/O ENTRY PERMIT												
5100A BLODGETT	DILLINGHA		8/19	1:20P	BLODGETT	8/21/75	Y	N	N GLTY		9/28/76	GUILTY	200	100			
574-24-5539 CLARKS POINT				MALE	E-BR H-BK	7/18/53	115	5-3	RES								
		D-75-00506-D 01			CF20 - OPERATING GEAR W/O GEAR LIC												
1605670E BLODGETT	DILLINGHA		8/19	1:20P	BLODGETT	8/21/75	Y	N	N GLTY		9/28/76	GUILTY	100	50			
574-24-5539 CLARKS POINT				MALE	E-BR H-BK	7/18/53	11[illegible]	5-3	RES								
		D-75-00490-R			CF11 - NO SEINE ENTRY PERMIT												
2005110A ROSCOVIUS	CORDOVA		7/28		ROSCOVIUS	8/07/75	N	N	N GLTY		9/15/75			SIS			
701-03-6692 CORDOVA				MALE	E-GN H-BK	4/04/1[illegible]	205	5-7	RES								
		D-75-00489-R			CF01 - C/F CL WATERS												
2 NICKELS	CORDOVA		7/31	6:30A	ROSCOVIUS	7/31/75	N	N	N GLTY					DIS			
574-18-8568 CORDOVA				MALE	E-BU H-BL	6/11/51	190	6-1	RES								
		D-75-00488			CF01 - C/F CLOSED WATERS												
2 NICKELS J	CORDOVA		7/31	6:20A	ROSCOVIUS	7/31/75	N	N	N GLTY					DIS			
514-18-1357 CORDOVA				MALE	E-BU H-BL	4/29/48	180	5-10	RES								
		D-75-00487-R			CF01 - C/F CLOSED WATERS												
2 NICKELS J	CORDOVA		7/31	6:30A	ROSCOVIUS	7/31/75	Y		N GLTY					DIS			
574-14-4376 CORDOVA				MALE	E-BR H-BR	8/30/42	250	6-1	RES								
		D-75-00479			CF25 - FISH OVER LIMIT OF NET												
1			6/30		BUNSELMEIER	6/30/75		Y	GUILTY		6/30/75	GUILTY	1500	250			
574-01-3039 BON	WA			MALE	E-BU H-GR	1/24/12	165	5-9	N-RES								
		D-75-00405			CF02 - COMM FISH CLOSED PERIOD												
D	NUSHAGAK		6/21		BLODGETT	6/21/75			HOLD		6/22/75	GUILTY	100	50			
536-16-3865 SEATTLE	WA			MALE	E-GN H-BR	12/19/22	150	5-6	N-RES								
		D-75-00403			CF02 - COMM FISH CLOSED PERIOD												
D			6/13		BLODGETT	6/15/75	Y		N GLTY		6/22/75	GUILTY	50				
542-40-3303 WARRENTON	OR			MALE	E-BU H-BR	10/19/38	170	6									

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C	D-75-00378	6/10	CF61 - COMM FISH W/O SIGN	HAMPTON	6/10/75		NOLO		6/15/75	GUILTY	25				
574-18-9557 DILLINGHAM			MALE		5/05/48 180 5-8		RES								
63348	D-75-00377	6/10	CF61 - COMM FISH W/O SIGN	HAMPTON	6/10/75		NOLO		6/15/75	GUILTY	25				
567-07-2934 DILLINGHAM			MALE	E-GR H-GR	11/06/14 174 5-6		RES								
39110A ROSCOVIUS CORDOVA	D-76-06906	4/21 12:01P	CF22 - NO COMM FISHING LIC	CARPENTER	4/21/76 N	N	GUILTY		5/11/76	GUILTY	100	50			
311-50-5328 CORDOVA			FEMALE	E-BR H-BL	9/07/46 150 5-1		RES								
393808 THOMPSON KENAI	D-76-06935-X	6/02 10:00A	CF61 - UNMARKED BUOY	THOMPSON	6/02/76 N	N	GUILTY		6/09/76	GUILTY	25	25			
535-22-8633 STERLING			MALE	E-BU H-GR	8/20/27 200 5-9		RES								
39290A CONVERSE KODIAK	E-76-00630-K 50	8/16 7:30A	CF01 - COMM FISHING CLOSED WATERS	CONVERSE	8/16/76 N	N	N GLTY		11/09/76	GUILTY	5000	2500	60		
574-18-2073 AKHIOK			MALE	E-BR H-BR	12/18/46 175 5-7		RES								
39290A CONVERSE KODIAK	E-76-00630-K 40	8/16 7:30A	CF01 - COMM FISHING CLOSED WATERS	CONVERSE	8/16/76 N	N	N GLTY		11/09/76	GUILTY	5000	2500	60		
574-22-0633 AKHIOK			MALE	E-BR H-BR	12/19/51 170 5-5		RES								
39290A CONVERSE KODIAK	E-76-00630-K 30	8/16 7:30A	CF01 - COMM FISHING CLOSED WATERS	CONVERSE	8/16/76 N	N	N GLTY	500	11/09/76	GUILTY	5000	2500	60		
532-58-5446 SELDOVIA			MALE	E-HZ H-BR	12/25/52 160 5-9		RES								
39290A CONVERSE KODIAK	E-76-00630-K 20	8/16 7:30A	CF01 - COMM FISHING CLOSED WATERS	CONVERSE	8/16/76 N	N	N GLTY	500	11/09/76	GUILTY	5000	2500	60		
535-60-8012 SEATTLE WA			MALE	E-BU H-BR	10/07/37 185 5-11		N-RES								
39290A CONVERSE KODIAK	E-76-00630-K 10	8/16 7:30A	CF01 - COMM FISHING CLOSED WATERS	CONVERSE	8/16/76 N	Y	N GLTY	500	11/09/76	GUILTY	5000	5000	90		12
538-44-7419 SEATTLE WA			MALE	E-BU H-BL	9/12/45 175 6		N-RES								
56801 BOCHEMUEHL KALSIN BA	E-76-00610-K	8/11 8:40P	CF60 - EMPLOY UNLICENSED FISHERMAN	BOCHEMUEHL	8/11/76 N	N	GUILTY	11882	8/13/76	GUILTY	75	75			
523-12-4554 HOMER			MALE	E-BU H-GR	11/19/19 210 6-5		RES								
39110A BOCHEMUEHL KALSIN BA	E-76-00601-K	8/11 12:18P	CF04 - COMM FISH W/O LICENSE	BOCHEMUEHL	8/11/76 N	N	GUILTY	11879	8/13/76	GUILTY	100	100	10		
519-66-3299 BOISE ID			MALE	E-HZ H-BR	8/18/53 200 5-5		N-RES								
56801 BOCHEMUEHL KALSIN BA	E-76-00600-K	8/11 12:18P	CF60 - EMPLOY UNLICENSED FISHERMAN	BOCHEMUEHL	8/11/76 N	N	GUILTY	11880	8/13/76	GUILTY	75	75			
179-42-6601 KODIAK			MALE	E-BU H-BR	7/26/31 185 6		RES								
1605905 WINN SAND PT	E-76-00564-S 70	8/05 3:30P	CF60 - ALIEN/COMM FISHING	WINN	8/06/76 Y	Y	HOLD		8/06/76	GUILTY	1250				
705-65-9498 NANAIMO BC			MALE	E-BR H-BR	10/23/31 180 5-8		N-RES								

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		E-76-00564-S 60 CF60 - ALIEN/COMM FISHING															
1605905 WINN 700-06-4975 VANCOUVER	SAND PT	8/05	3:30P	WINN MALE		8/06/76	Y	Y NOLO E-BU H-BR 10/07/21 190 5-10 N-RES			8/06/76	GUILTY	1250				
		E-76-00564-S 50 CF60 - ALIEN/COMM FISHING															
1605905 WINN 700-00-3825 DELTA	SAND PT	8/05	3:30P	WINN MALE		8/06/76	Y	Y NOLO E-BU H-GR 12/27/25 200 5-5 N-RES			8/06/76	GUILTY	1250				
		E-76-00564-S 40 CF60 - ALIEN/COMM FISHING															
1605905 WINN 704-37-0907 VANCOUVER	SAND PT	8/05	3:30P	WINN MALE		8/06/76	Y	Y NOLO E-BU H-BR 12/17/25 150 5-8 N-RES			8/06/76	GUILTY	1250				
		E-76-00564-S 30 CF60 - ALIEN/COM FISHING															
1605905 WINN 707-99-8788 KELOWNA	SAND PT	8/05	3:30P	WINN MALE		8/06/76	Y	Y NOLO E-HZ H-BR 12/15/31 190 6-1 M-RES			8/06/76	GUILTY	1250				
		E-76-00564-S 20 CF60 - ALIEN/COMM FISHING															
1605905 WINN 000-00-0000 W VANCOUVER	SAND PT	8/05	3:30P	WINN MALE		8/06/76	Y	Y NOLO E-BU H-BL 6/14/56 165 6 M-RES			8/06/76	GUILTY	1250				
		E-76-00564-S 10 CF60 - ALIEN/COMM FISHING															
1605905 WINN 000-00-0000 W VANCOUVER	SAND POIN	8/05	3:30P	WINN MALE		8/06/76	Y	Y GUILTY E-BU H-BR 4/15/35 180 5-9 N-RES			8/06/76	GUILTY	2500				
		E-76-00564 20 CF60 - ALIEN/COMM FISHING															
1605905 WINN 708-26-0328 KAMLOOPS	SAND PT	8/05	3:30P	WINN MALE		8/06/76	Y	Y NOLO E-BU H-BR 7/08/46 240 6-3 N-RES			8/06/76	GUILTY	1250				
		E-76-00541-K CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12040								
18320 DEVERS 574-16-6630 HOMER	KODIAK ZA	7/25	8:55P	DEVERS MALE		7/25/76	N	N E-BU H-BR 5/22/52 185 5-9 RES				DIS	DIS				
		E-76-00540-K CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12039								
18320 DEVERS 574-18-2582 HOMER	KODIAK	7/25	8:55P	DEVERS MALE		7/25/76	N	N E-BU H-BL 4/18/48 190 5-11 RES				DIS	DIS				
		E-76-00539-K CF02 - COM FISH PRIOR TO WEEKLY OPENING							12038								
18320 DEVERS 540-38-0899 KODIAK	KODIAK ZA	7/25	8:55P	DEVERS MALE		7/25/76	N	N E-BU H-BR 4/12/38 160 5-6 RES				DIS	DIS				
		E-76-00538-K CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12041								
18320 DEVERS 574-16-6629 HOMER	KODIAK ZA	7/25	8:55P	DEVERS MALE		7/25/76	N	N E-BU H-BR 5/14/47 230 5-10 RES				DIS	DIS				
		E-76-00537-K CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12037								
18320 DEVERS 541-26-0929 KELSO	KODIAK ZA	7/25	8:55P	DEVERS MALE		7/25/76	N	N E-BR H-BR 10/15/30 180 5-10 N-RES				DIS	DIS				
		E-76-00536-K CF02 - COMM FISH PRIOR TO WEEKLY OPENING							11958								
18320 DEVERS 419-56-3940 KODIAK	KODIAK ZA	7/25	8:55P	DEVERS MALE		7/25/76	N	N E-BU H-BR 1/30/43 215 6-5 RES				DIS	DIS				

VIOLATION CODE	SIGNED BY	COMPLAINT LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG	BOP	PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		E-76-00535-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12050							
18320	DEVERS	KODIAK ZA 7/25	8:55P	DEVERS		7/26/76	N	N						DIS		DIS	
537-52-5068	DOCKTON	WA	MALE	E-BU H-BR	10/10/52	200	6-2		N-RES								
		E-76-00534-K	CF25 - ANCHORED VESSEL WHILE FISHING							11903							
18332E	STARBARD	PORTAGE B 7/16	11:55A	STARBARD		7/16/76	N	N	NOLO		8/26/76	GUILTY		SIS			
527-01-6257	UGAK BAY		MALE	E-BU H-BR	5/09/11	190	6-1		RES								
		E-76-00533-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12048							
18320	STARBARD	ZACHER BA 7/25	8:55P	STARBARD		7/26/76	N	N						DIS			
574-22-2109	KODIAK		MALE	E-BR H-BR	10/20/52	190	6		RES								
		E-76-00532-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12049							
18320	DEVERS	KODIAK ZA 7/25	8:55P	DEVERS		7/26/76	N	N						DIS		DIS	
534-12-6768	KODIAK		MALE	E-BU H-GR	1/20/12	195	5-10		RES								
		E-76-00529-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							11957							
18320	STARBARD	KODIAK ES 7/25	8:55P	STARBARD		7/26/76	N	N						DIS			
367-34-5618	LARSEN BAY		MALE	E-BU H-BR	1/24/22	190	5-8		RES								
		E-76-00710-K 10	CF01 - C/F SHRIMP CLOSED AREA														
2	RHODES	KODIAK 9/10	12:05P	RHODES		9/11/76	N	N	GUILTY		9/15/76	GUILTY		SIS			
262-48-5884	KODIAK		MALE	E-BR H-BR	7/06/35	200	5-11		RES								
		E-76-00710-K 20	CF01 - C/F SHRIMP CLOSED AREA														
2	RHODES	KODIAK 9/10	12:05P	RHODES		9/11/76	N	N	GUILTY	125	9/15/76	GUILTY		SIS			
560-58-9733	KODIAK		MALE	E-HZ H-BR	10/08/43	160	5-11		N-RES								
		E-76-00710-K 30	CF01 - C/F SHRIMP CLOSED AREA														
2	RHODES	KODIAK 9/10	12:05P	RHODES		9/11/76	N	N	GUILTY		9/15/76	GUILTY		SIS			
465-58-2258	KODIAK		MALE	E-BU H-BR	3/13/43	195	6		N-RES								
		E-76-00527-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12042							
18320	STARBARD	ZACHER BA 7/25	8:55P	STARBARD		7/26/76	N	N						DIS			
518-52-2543	KODIAK		MALE	E-GN H-BR	7/02/43	210	6-2		RES								
		E-76-00526-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12043							
18320	STARBARD	ZACHER BA 7/25	8:55P	STARBARD		7/26/76	N	N						DIS			
574-26-9830	KODIAK		MALE	E-BU H-BR	12/05/55	180	6-1		RES								
		E-76-00525-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							12045							
18320	STARBARD	ZACHER BA 7/25	8:55P	STARBARD		7/26/76	N	N						DIS			
574-03-8633	LARSEN BAY		MALE	E-BR H-BK	9/15/25	215	5-11		RES								
		E-76-00524-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							11963							
18320	STARBARD	ZACHER BA 7/25	8:55P	STARBARD		7/27/76	N	N						DIS			
538-03-5123	GIG HARBOR	WA	MALE	E-BR H-GR	4/25/12	195	6-1		N-RES								
		E-76-00523-K	CF02 - COMM FISH PRIOR TO WEEKLY OPENING							11959							
18320	STARBARD	ZACHER BA	8:55P	STARBARD		7/26/76	N	N						DIS			
523-50-0574	VAIL	CO	MALE	E-BU H-BR	2/26/36	175	5-10		N-RES								

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		E-76-00512-K 30 CF01 - C/F CLOSED WATERS														
1835010 RHODES	KODIAK		7/27	9:15A	RHODES	9/03/76	N N	GUILTY		9/09/76	GUILTY	500	500			
574-50-1634 KODIAK			MALE		E-BR H-BK 2/24/58 120 5-3			RES								
		E-76-00734-K 01 CF21 - COMM FISH W/O VESSEL LICENSE														
1605510 CARPENTER	KODIAK		9/21		CARPENTER	9/21/76	N N	NOLO		9/29/76	GUILTY	SIS				
563-20-3947 SAN DIEGO		CA	MALE		E-BU H-GR 6/01/24 195 5-8			N-RES								
		E-76-00734-K 02 CF11 - COMM FISH W/O INT USE PERMIT														
1643140A CARPENTER	KODIAK		9/21		CARPENTER	9/21/76	N N	GUILTY		9/29/76	GUILTY	SIS				
563-20-3947 SAN DIEGO		CA	MALE		E-BU H-GR 6/01/24 195 5-8			N-RES								
		E-76-00734-K 03 CF20 - COMM FISH W/O GFBA LICENSE														
1605560 CARPENTER	KODIAK		9/21		CARPENTER	9/21/76	N N	GUILTY		9/29/76	GUILTY	SIS				
563-20-3947 SAN DIEGO		CA	MALE		E-BU H-GR 6/01/24 195 5-8			N-RES								
		E-76-00778-K CF41 - POSSESSION OF UNDERSIZE CRAB														
34060A BOCHEMUEHL	KODIAK		9/21	12:20P	BOCKEMUEHL	9/23/76	Y N	GUILTY		9/28/76	GUILTY	5000	2500			
537-44-1141 KODIAK			MALE		E-BU H-RD 8/27/46 200 6-2			RES								
		E-76-00780-K CF41 - POSSESSION OF UNDERSIZE CRAB														
34060A BOCKEMUEHL	KODIAK		9/22	4:50P	BOCKEMUEHL	9/23/76	Y N	GUILTY		10/12/76	GUILTY	5000	2500			
000-00-0000 KODIAK																
		E-76-00808-K CF11 - NO ENTRY PERMIT														
1643140A SULLIVAN	KARLUK		9/22	11:00A	SULLIVAN	9/22/76	N N	GUILTY		10/07/76	GUILTY	50	50			
574-18-4290 KARLUK			MALE		E-BR H-BR 8/20/48 175 5-11			RES								
		E-76-00512-K 20 CF01 - C/F CLOSED WATERS														
1835010 RHODES	KODIAK		7/27	9:15A	RHODES	9/03/76	N N	GUILTY		9/09/76	GUILTY	500	500			
574-22-0380 KODIAK			MALE		E-BR H-BK 9/26/36 160 5-5			RES								
		E-76-00812-K CF22 - COMM FISH W/O LICENSE														
1605480A CARPENTER	KODIAK		9/25		CARPENTER	10/11/76	N N	GUILTY		10/12/76	GUILTY	50	50	SIS		
541-52-1340 DEPOE BAY		OR	MALE		E-BU H-BL 1/07/50 170 5-10			N-RES								
		E-76-00813-K CF22 - COMM FISH W/O LICENSE														
1605480A CARPENTER	KODIAK		9/25		CARPENTER	10/11/76	N N	GUILTY		10/12/76	GUILTY	50	50	SIS		
136-52-9724 EVERETT		WA	MALE		E-HZ H-BL 5/28/57 145 5-8			N-RES								
		E-76-00820-K CF60 - NO TANK INSPECTION														
31030A BOCKEMUEHL	KODIAK		5/21		BOCKEMUEHL	9/27/76	N N	GUILTY		10/04/76	GUILTY	100				
544-48-0974 KODIAK			MALE		E-BU H-BL 11/28/51 185 5-10			RES								
		E-76-00821-K CF60 - EMPLOY UNLICENSED FISHERMAN														
16056001 CARPENTER	KODIAK		9/25		CARPENTER	10/11/76	N N	GUILTY		10/12/76	GUILTY	50	50	SIS		
544-66-1819 KODIAK			MALE		E-BU H-BR 11/06/52 150 5-10			RES								
		E-76-00512-K 10 CF01 - C/F CLOSED WATERS														
1835010 RHODES	KODIAK		7/27	9:15	RHODES	9/03/76	N N	GUILTY		9/09/76	GUILTY	1000	1000			
574-12-6043 KODIAK			MALE		E-BR H-BK 7/19/34 170 5-8			RES								

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		E-76-00859-K		CF40 - ILLEGAL POT STORAGE						11965							
34050C	DEVERS	KODIAK	9/28	8:40A	DEVERS	10/15/76	N	Y	GUILTY		10/26/76	GUILTY	150	150	3		
574-12-0033	KODIAK			MALE	E-HZ H-BK	10/07/37	195	5-10	RES								
		E-76-00508-S		CF22 - OBTAIN 2 COMM FISHING LICENSES													
391108	WINN	FALSE PAS	6/22	1:45P	WINN	6/22/76	N	N	GUILTY		6/24/76	GUILTY	100	50			
536-34-6078	BELLINGHAM	WA		MALE	E-BR H-BR	3/23/39	190	6-1	N-RES								
		E-76-00507-S		CF22 - COMM FISH/NO LIC													
5480A	WINN	FALSE PAS	6/18	6:35P	WINN	6/18/76	N	N	GUILTY		6/24/76	GUILTY	100	50			
537-18-3380	SEATTLE	WA		MALE	E-BU H-BR	12/24/24	185	6	N-RES								
		E-76-00506-S		CF02 - GILL NET/CLOSED PERIOD													
93109C	WINN	FALSE PAS	6/21	5:49A	WINN	6/21/76	N	N	GUILTY		6/24/76	GUILTY	400	175			
532-18-2698	TACOMA	WA		MALE	E-BU H-BL	6/16/22	170	6	N-RES								
		E-76-00888-K	10	CF60 - EMPLOY UNLICENSED FISHERMAN													
16056801	LORRING	KODIAK	9/01	12:01A	LORRING	10/02/76	N	N	GUILTY		10/13/76	GUILTY	100	25			
505-20-7642	KODIAK			MALE	E-BR H-GR	2/03/24	210	6-1	RES								
		E-76-00888-K	20	CF22 - COMM FISH W/O LICENSE						12571							
1605480A	LORRING	KODIAK	9/01	12:01A	LORRING	9/16/76	N	N	GUILTY		10/13/76	GUILTY	150	75			
574-32-6206	KODIAK			MALE	E-BU H-BL	4/19/57	145	5-10	RES								
		E-76-00888-K	30	CF22 - COMM FISH W/O LICENSE													
1605480A	LORRING	KODIAK	9/01	12:01A	LORRING	10/12/76	N	N	GUILTY		10/13/76	GUILTY	150	75			
574-22-1550	KODIAK			MALE	E-BR H-BR	9/30/51	165	5-11	RES								
		E-76-00938-K		CF61 - IMPROPERLY MARKED CRAB POTS						8630							
340508	RHODES	KODIAK	10/08	3:00P	RHODES	10/12/76	N	N	NOLO		10/19/76	GUILTY	50	50			
574-12-7138	KODIAK			MALE	E-BR H-BR	5/22/37	170	5-11	RES								
		E-76-00982-K	01	CF42 - FAIL TO REGISTER VESSEL & GEAR													
31020C	STIMSON	KODIAK	10/15		STIMSON	10/22/76	N	N	GUILTY		11/01/76	GUILTY	150	50			
540-30-8551	KODIAK			MALE	E-BU H-BR	4/23/32	210	5-9	RES								
		E-76-00982-K	02	CF60 - NO TANK INSPECTION													
31030A	STIMSON	KODIAK	10/15		STIMSON	10/22/76	N	N	GUILTY		11/01/76	GUILTY	150	50			
540-30-8551	KODIAK			MALE	E-BU H-BR	4/23/32	210	5-9	RES								
		E-76-01000-K		CF01 - C/F KING CRAB CLOSED WATER													
34435D	RHODES	KODIAK	10/07	8:25A	RHODES	11/05/76	N	N	GUILTY		11/12/76	GUILTY	250				
574-14-0262	KODIAK			MALE	E-BR H-BR	8/24/40	190	5-10	RES								
		E-76-00505-S		CF01 - GILL NET/CLOSED WATERS													
93109C	WINN	FALSE PAS	6/17	5:48A	WINN	6/18/76	N	N	GUILTY		6/24/76	GUILTY	400	175			
574-14-9836	FALSE PASS			MALE	E-BR H-BR	11/09/44	200	5-8	RES								
		E-76-00496-K		CF25 - VESSEL NOT ATTACHED TO SEINE						11904							
18332E	BYRD	KODIAK	7/21	9:50P	BYRD	7/21/76	N	N	GUILTY		7/23/76	GUILTY	250	100			
217-30-5677	KODIAK			MALE	E-BU H-BR	4/18/26	179	5-11	RES								

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		E-76-01036-D 10 CF41 - UNDERSIZE KING CRAB															
34920A WINN	UNALASKA		10/16	6:00P	WINN	10/16/76	N	N	NOLO		10/16/76	GUILTY	1000	500			
531-20-4388 SEATTLE		WA		MALE	E-BU H-BR	3/02/29	170	5-9	N-RES								
		E-76-01036-D 20 CF41 - UNDERSIZE KING CRAB															
34920A WINN	UNALASKA		10/16	6:00P	WINN	10/16/76	N	N	NOLO		10/17/76	GUILTY	1000	500			
569-80-0600 CARDIFF		CA		MALE	E-GN H-BR	5/22/50	205	6-3	N-RES								
		E-76-01036-D 30 CF41 - UNDERSIZE KING CRAB															
34920A WINN	UNALASKA		10/16	6:00P	WINN	10/16/76	N	N	NOLO		10/17/76	GUILTY	1000	500			
531-46-3186 SEATTLE		WA		MALE	E-BU H-BR	11/30/55	190	6-5	N-RES								
		E-76-01036-D 40 CF41 - UNDERSIZE KING CRAB															
34920A WINN	UNALASKA		10/16	6:00P	WINN	10/16/76	N	N	NOLO		10/17/76	GUILTY	1000	500			
572-70-1844 DUTCH HARBOR				MALE	E-BU H-BR	3/06/48	165	6	N-RES								
		E-76-01037-S 10 CF16 - SUB-LEGAL KING CRAB															
34920A WINN	UNALASKA		10/09	1:00P	WINN	10/09/76	N	N	NOLO		10/19/76	GUILTY	1000	500			
057-30-5206 SEATTLE		WA		MALE	E-BU H-BR	1/28/21	190	6	N-RES								
		E-76-01037-S 20 CF16 - SUB-LEGAL KING CRAB															
34920A WINN	UNALASKA		10/09	1:00P	WINN	10/09/76	N	N	NOLO		10/19/76	GUILTY	1000	500			
538-32-2174 SEATTLE		WA		MALE	E-GN H-BR	6/07/18	155	5-10	N-RES								
		E-76-01037-S 30 CF16 - SUB-LEGAL KING CRAB															
34920A WINN	UNALASKA		10/09	1:00P	WINN	10/09/76	N	N	NOLO		10/19/76	GUILTY	1000	500			
538-34-4526 SEATTLE		WA		MALE	E-BU H-BR	5/19/39	205	6-1	N-RES								
		E-76-01037-S 40 CF16 - SUB-LEGAL KING CRAB															
34920A WINN	UNALASKA		10/09	1:00P	WINN	10/09/76	N	N	NOLO		10/19/76	GUILTY	1000	500			
098-30-1369 SEATTLE		WA		MALE	E-HZ H-BR	10/26/38	185	6-2	N-RES								
		E-76-01037-S 50 CF16 - SUB-LEGAL KING CRAB															
34920A WINN	UNALASKA		10/09	1:00P	WINN	10/09/76	N	N	NOLO		10/19/76	GUILTY	1000	500			
018-28-5406 SEATTLE		WA		MALE	E-BU H-BR	2/23/32	170	5-11	N-RES								
		E-76-01038-D CF60 - CRABBING/NO TANK INSPECTION															
34030B WINN	UNALASKA		10/12	4:00P	WINN	10/12/76	N	N	GUILTY		10/13/76	GUILTY	500	50			
544-48-6646 PORTLAND		OR		MALE	E-BU H-BR	6/26/46	135	5-6	RES								
		E-76-01091-D CF42 - FAIL TO REGISTER FOR AREA															
31020C BOCKEMUEHL	UNALASKA		8/06	12:00P	BOCKEMUEHL	11/04/76	N	N	GUILTY		11/04/76	GUILTY	300	300			
539-76-6887 SEATTLE		WA		MALE	E-BU H-GR	3/03/19	180	5-8	N-RES								
		E-76-01092-D 10 CF41 - UNDERSIZE KING CRAB															
34920A BOCKEMUEHL	UNALASKA		10/13	12:00P	BOCKEMUEHL	10/31/76	N	N	GUILTY		11/06/76	GUILTY	1000	700			
014-28-8978 SEATTLE		WA		MALE	E-BR H-GR	7/31/29	160	6-1	N-RES								
		E-76-01092-D 20 CF41 - UNDERSIZE KING CRAB															
34920A BOCKEMUEHL	UNALASKA		10/13	12:00P	BOCKEMUEHL	10/31/76	N	N	GUILTY		10/31/76	GUILTY	1000	700			
000-00-0000 SEATTLE		WA		MALE	E-BU H-BL	8/30/56	175	6	N-RES								

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E-76-01092-D 30 CF41 - UNDERSIZE KING CRAB																
34920A BOCKEMUEHL 534-66-9817 SEATTLE	UNALASKA WA	10/13	12:00P MALE	BOCKEMUEHL E-HZ H-BR	10/31/76 8/26/56	N 160	N 5-10	GUILTY N-RES		10/31/76	GUILTY	1000	700			
E-76-01092-D 40 CF41 - UNDERSIZE KING CRAB																
34920A BOCKEMUEHL 156-34-9093 SEATTLE	UNALASKA WA	10/13	12:00P MALE	BOCKEMUEHL E-BU H-BL	10/31/76 2/26/44	N 165	N 5-9	GUILTY N-RES		10/31/76	GUILTY	1000	700			
E-76-01092-D 50 CF41 - UNDERSIZE KING CRAB																
34920A BOCKEMUEHL 534-66-9182 EDMONDS	UNALASKA WA	10/13	12:00P MALE	BOCKEMUEHL E-HZ H-BR	10/31/76 11/05/39	N 250	N 6-3	GUILTY N-RES		10/31/76	GUILTY	1000	700			
E-76-00450-K 40 CF01 - C/F SALMON CLOSED WATER																
183502 RHODES 531-60-0532 ANACORTES	KODIAK WA	7/12	11:30A MALE	RHODES E-BU H-BR	8/01/76 1/22/54	J 150	N 5-7	N GLTY N-RES	250	11/03/76	N GLTY	DIS				
E-76-00450-K 30 CF01 - C/F SALMON CLOSED AREA																
183502 RHODES 531-60-0001 ANACORTES	KODIAK WA	7/12	11:30A MALE	RHODES E-HZ H-BR	8/01/76 5/14/54	N 180	N 5-11	N GLTY N-RES	250	11/03/76	N GLTY	DIS				
I-75-22303-N CF61 - COMM FISHING W/UNMARKED GEAR																
3334 MANN 574-18-6322 GOLOVIN	NOME	7/05	7:00P MALE	MANN E-BR H-BK	7/05/75 9/04/48	N 180	N 5-7	RES		1/28/76		DIS				
I-75-22304 CF22 - COMM FISH W/O LICENSE																
1605480 MANN 574-18-0363 COUNCIL		7/05	7:00P MALE	MANN E-BR H-BK	7/05/75 8/06/46	 150	 5-6	RES		1/28/76		DIS				
E-76-00450-K 20 CF01 - C/F SALMON CLOSED AREA																
183502 RHODES 533-56-5971 BELLINGHAM	KODIAK WA	7/12	11:30A MALE	RHODES E-BR H-BR	8/01/76 8/09/50	N 160	N 6	N GLTY N-RES	250	11/03/76	N GLTY	DIS				
E-76-00450-K 10 CF01 - C/F SALMON CLOSED AREA																
183502 RHODES 535-58-7678 KODIAK	KODIAK	7/12	11:30A MALE	RHODES E-BR H-BR	8/01/76 8/09/53	N 160	N 5-10	N GLTY RES		11/03/76	N GLTY	DIS				
E-76-00431-K CF42 - FAILURE TO REGISTER									11885							
31020C BOCKEMUEHL 552-22-4112 KODIAK	KODIAK	10/01	6:15P MALE	BOCKEMUEHL E-BU H-BR	10/01/76 9/25/25	N 155	N 6	GUILTY RES		10/06/76	GUILTY	1000	500			
E-76-00395-S CF02 - SALMON FISHING/CLOSED SEASON																
9320F WINN 569-68-7934 SAND POINT	SAND POIN	6/14	7:45A MALE	CPL WINN E-HZ H-BR	6/16/76 5/17/47	N 160	N 5-7	GUILTY N-RES		6/16/76	GUILTY	1000	250			
E-76-00393-S CF05 - FALSE STATEMENT ON LICENSE																
1605665 WINN 553-82-3145 SAND POINT	SAND POIN	6/01	 MALE	CPL WINN E-BR H-BR	6/05/76 2/12/50	N 160	N 6-2	GUILTY N-RES		6/16/76	GUILTY	90	50			
E-76-00390-S CF22 - COMMERCIAL FISHING/NO LICENSE																
1605480A LEERING 538-42-3717 SAND POINT	SAND POIN	6/07	9:05A MALE	LEERING E-BU H-BR	6/07/76 6/12/44	N 175	N 6	GUILTY RES		6/16/76	GUILTY	60	30			

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED FG	SEIZED BOP	SEIZED PLEA	USC NO TRAIL BAIL	IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LIC REV
		E-76-00352-K			CF42 - FAILURE TO REGISTER												
31020C	BOCKEMUEHL	KODIAK	5/21		BOCKEMUEHL	9/27/76	N	N	GUILTY		10/04/76	GUILTY	150	150			
544-48-0974	KODIAK			MALE	E-BU H-BL 11/28/51 135 5-10				RES								
		E-76-00310-K			CF11 - NO INTERIM USE PERMIT					11955							
1643140A	CARPENTER D	KODIAK	5/23		CARPENTER D	5/23/76	N	N	GUILTY		5/24/76	GUILTY	150	150			
013-26-8278	SEATTLE	WA		MALE	E-BU H-BL 10/20/13 190 5-8				N-RES								
		E-76-00237-K			CF60 - NO TANK INSPECTION					11886							
31030A	BOCKEMUEHL	KODIAK	10/01	4:15P	BOCKEMUEHL	10/01/76	N	N	GUILTY		10/06/76	GUILTY	100	100			
552-22-4112	KODIAK			MALE	E-BU H-BR 9/25/25 185 6				RES								
		I-75-23667			CF22 - COMM FISH W/O LIC IN POSSESSION												
1605480			7/16	1:30P	MANN	7/16/75			N GLTY		7/22/75	GUILTY	10	10			
574-20-3373	UNALAKLEET			MALE	E-BR H-BK 7/29/48 140 5-7				RES								
		I-75-23887-F			CF22 - COMMERCIAL FISH W/O LICENSE												
1605480	BINSCHUS	NENANA	9/09		BINSCHUS	9/09/75	N	N									
574-09-3470	NENANA			MALE	E-BR H-GR 10/15/16 182 5-11				RES								
		I-75-24026-N			CF22 - COMMERCIAL FISH W/O LICENSE												
1605480A	MANN	KOTZEBUE	8/13		MANN	8/13/75	N	N	GUILTY			GUILTY	10	10			
495-22-4975	FAIRBANKS			MALE	E-BR H-BR 11/18/29 160 5-10				RES								
		E-76-00275-D			CF11 - NO INTERIM USE PERMIT					11890							
1643140A	BOCKEMUEHL	UNALASKA	3/17	12:00P	BOCKEMUEHL	11/07/76	N	N	GUILTY		11/07/76	GUILTY	100	100			
544-43-8645	PORTLAND	OR		MALE	E-BU H-BR 6/26/46 135 5-6				N-RES								
		E-76-00264-K			CF60 - NO TANK INSPECTION					11901							
31030A	BYRD	KODIAK	5/10	9:00A	BYRD	5/13/76	N	N	N GLTY		8/11/76	GUILTY	25	25			
574-10-6856	KODIAK			MALE	E-BU H-BR 5/28/31 170 5-7				RES								
		E-76-00241-K			CF42 - FAIL TO CHECK OUT OF AREA					11976							
350330C	CONVERSE	KODIAK	5/01	4:00A	CONVERSE	5/03/76	N	N	GUILTY			GUILTY	25	25	SIS		
537-22-4869	KODIAK			MALE	E-BU H-GR 5/14/27 145 5-4				RES								
		I-75-24205-K			CF02 - COMMERCIAL FISH DURING CLOSED SEAS												
503320	MANN	KOTZEBUE	8/04		MANN	8/04/76	N	N	N GLTY		12/01/75	N GLTY					
555-30-0251	KOTZEBUE			MALE	E-HZ H-BR 7/26/28 130 5-6				RES								
		E-76-00236-K	02	CF21 - COMM FISH W/O VESSEL LIC						12002							
1605510	FELBERG	KODIAK	4/28	5:30A	FELBERG	4/28/76	N	N	NOLO			GUILTY	100	25			
532-40-7792	KODIAK			MALE	E-HZ H-BR 5/28/41 185 6-4				RES								
		E-76-00235-K	01	CF22 - COMM FISH W/O LICENSE						12001							
1605480A	FELBERG	KODIAK	4/28	5:30A	FELBERG	4/28/76	N	N	NOLO		8/03/76	GUILTY	100	25			
532-40-7792	KODIAK			MALE	E-HZ H-BR 5/28/41 185 6-4				RES								
		E-76-00192-K			CF60 - FISH SHRIMP W/O INSPECTION												
31030A	CARPENTER	KODIAK	4/15		CARPENTER	4/23/76	N	N			8/18/76		DIS	DIS			
148-30-6032	KODIAK			MALE	E-BR H-BR 4/11/41 200 6				RES								

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		E-76-00177-K		CF11 - FISH SHRIMP W/O INTERIM USE PERMIT						11878							
1643140A BOCKEMUEHL 210-24-9363 KODIAK		KODIAK	5/04		BOCKEMUEHL	5/04/76	N	N	NOLO			GUILTY	100	100			
				MALE	E-BR H-BR	6/06/33	180	6-1	RES								
		E-76-00170-K		CF11 - FISH KC W/O INT USE PERMIT						11877							
1643140A BOCKEMUEHL 389-42-2275 UNALASKA		KODIAK	5/03		BOCKEMUEHL	5/03/76	N	N	GUILTY			GUILTY	100	100			
				MALE	E-BR H-BR	11/22/42	165	5-11	RES								
		E-76-00099-K		CF05 - NON-RES W/RES LICENSE						7276							
1605665 CARPENTER 396-44-3411 KODIAK		KODIAK	1/02		CARPENTER	3/12/76	N	N	GUILTY		3/17/76	GUILTY	50	50	30		24
				MALE	E-BU H-BL	1/12/50	200	6-2	N-RES								
		E-76-00007-K		CF14 - TRANSPORTING LIVE CRAB													
1610240 CARPENTER 531-20-5328 SEATTLE		KODIAK WA	12/04	MALE	CARPENTER E-BU H-BL	2/13/76 3/21/29	N 160	N 5-9	GUILTY N-RES		8/20/76	GUILTY	200	200			
		E-75-03748-K		CF11 - NO INTERIM USE PERMIT													
1643140A BOCKEMUEHL 574-12-2711 KODIAK		KODIAK	12/01 12:00P		BOCKEMUEHL	9/27/76	N	N	GUILTY		10/21/76	GUILTY	100	50			
				MALE	E-BR H-BR	2/11/36	250	6-1	RES								
		E-75-03722-K		CF42 - COMM FISH NC REGISTRATION						7271							
350204 FELBERG 552-52-7672 KODIAK		KODIAK	12/14		FELBERG	12/16/75	N	N	N GLTY		1/30/76	GUILTY	100	25			
				MALE	E-BR H-BR	12/17/40	175	5-8	RES								
		E-75-03714-K		CF14 - POSS CRAB 72HRS AFTER CLOSURE													
340355 SELDEN 533-46-1380 KODIAK					SELDEN	2/11/76	N	N				DIS					
				MALE	E-BU H-BR	12/08/49	180	5-10	RES								
		E-75-03698-D		CF11 - NO INTERIM USE PERMIT													
1643140A BOCKEMUEHL 539-40-3068 UNALASKA		UNALASKA	11/12 12:00P		BOCKEMUEHL	11/05/76	N	N	GUILTY		11/05/76	GUILTY	200	200			
				MALE	E-BU H-BL	1/03/43	200	5-10	RES								
		E-75-03695-K		CF42 - FISH W/O REGISTRATION						7385							
310200 CARPENTER 574-07-8550 KODIAK		KODIAK	10/ 0		CARPENTER	2/06/76	N	N	NOLO			GUILTY	100	100	SIS		
				MALE	E-BR H-BK	11/08/26	170	5-9	RES								
		E-75-03653-K		CF60 - NO TANK INSPECTION						7387							
34030A CARPENTER 574-05-8143 PORT LIONS		PORT LION	9/01		CARPENTER	2/26/76	N	N	GUILTY			GUILTY	25				
				MALE	E-BR H-BR	6/04/21	190	5-7	RES								
		E-75-03650-K		CF60 - FISH W/O TANK INSPECTION						7384							
34030A CARPENTER D 537-34-6759 KODIAK		KODIAK	10/29		CARPENTER D	1/06/76	N	N	GUILTY				100	25			
				MALE	E-BR H-BR	8/12/39	200	5-10	RES								
		E-75-03648-K		CF60 - NO TANK INSPECTION						7390							
340302 CARPENTER 393-44-5130 KODIAK		KODIAK	10/29		CARPENTER	12/02/75	N	N	NOLO		12/16/75	GUILTY	100	50			
				MALE	E-BR H-BR	2/10/44	190	6	RES								
		E-75-03644-K		CF60 - NO TANK INSPECTION						3663							
34030A CARPENTER 574-09-6960 PORT LIONS		PORT LION	10/28		BOCKEMUEHL	3/05/76	N	N	GUILTY			GUILTY	25				
				MALE	E-BR H-BR	4/06/31	180	5-7	RES								

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340307 BOCKEMUEHL 574-12-3610 OLD HARBOR		E-75-03642-K KODIAK MALE	4/30		CF60 - FISH W/O TANK INSPECT BOCKEMUEHL J E-BR H-BK 12/11/41 165 5-4	4/30/76	N	N	RES	11876						DIS	
34030A CONVERSE 574-20-1751 KODIAK		E-75-03641-K KODIAK MALE	10/29		CF60 - FISH W/O TANK INSPECTION CONVERSE E-BR H-BR 3/30/49 200 6	2/06/76	N	N	GUILTY RES	1489	2/23/76	GUILTY	100	25			
34030A CARPENTER 574-14-1820 PORT LIONS		E-75-03639-K PORT LION MALE	10/29		CF60 - NO TANK INSPECTION CARPENTER E-BR H-BR 2/11/42 164 5-10	2/26/76	N	N	GUILTY RES	7389		GUILTY	25				
34030A CARPENTER 574-05-0432 PORT LIONS		E-75-03638-K PORT LION MALE	9/01		CF60 - NO TANK INSPECTION CARPENTER E-BR H-BK 9/05/24 205 5-9	2/26/76	N	N	GUILTY RES	7387		GUILTY	25				
34030A CARPENTER 574-22-7246 PORT LIONS		E-75-03637-K PORT LION MALE	9/01		CF60 - NO TANK INSPECTION CARPENTER E-BR H-BK 12/31/51 165 5-10	2/26/76	N	N	GUILTY RES	7390		GUILTY	25				
34030A CONVERSE 574-18-1805 OLD HARBOR		E-75-03636-K KODIAK MALE	10/29		CF60 - FISH W/O INSPECTION CONVERSE E-BR H-BR 2/09/48 150 5-4	2/02/76	N	N	RES	1488						DIS	
34030A CARPENTER D 741-09-5501 OUZINKIE		E-75-03635-K KODIAK MALE	10/29		CF60 - FISH W/O TANK INSPECTION CARPENTER D E-BR H-BR 2/02/40 200 5-3	1/06/76	N	N	GUILTY GUIDE	7383		GUILTY	100	25			
1643140 SELDEN 539-28-5141 KODIAK		E-75-03633-K KODIAK MALE	12/16 11:30A		CF11 - FISH KING CRAB W/O INTERM PERMIT SELDEN E-BR H-BR 5/18/29 165 5-6	12/15/75	N	N	RES	1511	12/30/75	GUILTY	100	25			
34030A CARPENTER 574-05-7281 PORT LIONS		E-75-03629-K PORT LION MALE	9/01		CF60 - NO TANK INSPECTION CARPENTER E-BR H-BR 8/29/10 160 5-9	2/26/76	N	N	GUILTY RES	7388		GUILTY	25				
34030A SELDEN 518-46-2087 NAMPA		E-75-03623-K KODIAK ID	9/21		CF60 - FISHING W/O TANK INSPECTION SELDEN E-BR H-BR 8/29/42 185 5-11	2/26/76	N	N	NOLO N-RES		9/03/76	GUILTY	25	25			
133509 FELDERO 187-26-4582 KODIAK		E-75-03404-K KODIAK MALE	8/21	4:35P	CF01 - COMM FISH CLOSED WATERS FELDERO E-BR H-GR 7/22/37 170 5-6	8/21/75	N	N	NOLO RES		4/12/76	GUILTY	50	50	SIS		
34065 BYRD 574-24-1200 KODIAK		E-75-03346-K 20 KODIAK MALE	8/27	3:25P	CF41 - UNDERSIZED KING CRAB BYRD E-BR H-BR 2/10/57 165 5-11	10/14/75	N	N	NOLO RES							DP	
34065 BYRD 574-05-6981 KODIAK		E-75-03346-K 10 KODIAK MALE	8/27	3:25P	CF41 - POSSESS UNDERSIZED CRAB BYRD E-BR H-BR 6/24/27 200 5-11	8/28/76	N	N	GLTY RES		8/17/76	GUILTY	1000	500	15		

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E-75-03312 20 CF01 - COMM FISH CLOSED WATER															
18350		8/14	BYRD	9/14/75			NOLO			GUILTY	2000	500	10		
574-07-7149 KODIAK		MALE	E-BU H-GR 4/21/28 190 5-9				RES								
E-75-03299-K 30 CF02 - COMM FISH CLOSED PERIOD															
18320 FELBERG	KODIAK	7/30 2:30P	FELBERG	9/25/75	N	N	N GLTY	250	6/07/76	GUILTY	250	50	10		
574-18-5798 KODIAK		MALE	E-HZ H-BR 1/31/48 175 6-1				RES								
E-75-03299-K 20 CF02 - C/F CLOSE PERIOD								7512456							
13320 FELBERG	KODIAK	7/30 2:00P	FELBERG	9/25/75	N	N	GUILTY	12/17		GUILTY	250	50			
576-38-7927 KODIAK		MALE	E-GN H-BR 8/05/50 185 6				RES								
E-75-03299-K 10 CF02 - COMM FISH CLOSED PERIOD															
18320 FELBERG	KODIAK	7/30 2:30P	FELBERG	9/24/75	N	N	GUILTY		11/07/75	GUILTY	1000	450			
574-22-5068 KODIAK		MALE	E-BR H-BR 4/28/49 190 6-1				RES								
E-75-03263-K 01 CF01 - COMM FISH CLOSED WATERS								7357							
38200A BYRD	KODIAK	8/01 2:15P	MACKEY	8/01/75	N	N	NOLO				200	200			
574-22-0380 KODIAK		MALE	E-BR H-BK 9/26/56 160 5-6				RES								
E-75-03229 80 CF01 - COMM FISH CLOSED WATER															
18350		7/23 9:00P	DEVERS	7/23/75							DIS				
000-00-0000															
E-75-03229 70 CF01 - COMM FISH CLOSED WATERS															
1835043 CONVERSE	KODIAK	7/23 9:00P	CONVERSE	8/01/75	N	N			6/30/76		DIS				
574-18-2073 AKHIOK		MALE	E-BR H-BR 12/18/46 155 5-4				RES								
E-75-03229 60 CF01 - COMM FISH CLOSED WATERS															
1835043 CONVERSE	KODIAK	7/23 9:00P	CONVERSE	8/01/75	N	N			6/30/76		DIS				
574-14-1293 ANCHORAGE		MALE	E-BR H-BR 4/01/45 165 5-5				RES								
E-75-03229 50 CF01 - COMM FISH CLOSED WATERS															
1835043 CONVERSE	KODIAK	7/23 9:00P	CONVERSE	8/01/75	N	N	NOLO		6/30/76	GUILTY	3212	712			
574-14-1294 KODIAK		MALE	E-BR H-BR 4/06/43 150 5-5				RES								
E-75-03229 40 CF01 - COMM FISH CLOSED WATER															
18350		7/23 9:00P	DEVERS	7/23/75						GUILTY	DIS				
000-00-0000															
E-75-03229 30 CF01 - COMM FISH CLOSED WATER															
18350		7/23 9:00P	DEVERS	7/23/75							DIS				
000-00-0000															
E-75-03229 20 CF01 - COMM FISH CLOSED WATERS															
1835043 CONVERSE	KODIAK	7/23 9:00P	CONVERSE	8/01/75	N	N			6/30/76		DIS				
574-18-1800 AKHIOK		MALE	E-BR H-BR 11/11/42 120 5				RES								
E-75-03229 10 CF01 - COMM FISH CLOSED WATERS															
1835043 CONVERSE	KODIAK	7/23 9:00P	CONVERSE	8/01/75	N	N	NOLO		6/30/76	GUILTY	3212	712			
574-09-5914 KODIAK		MALE	E-BR H-BR 2/24/31 145 5-6				RES								

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	E-75-03228	7/10		CF42 - FISH DUNGENESS W/O REGISTRATION CARPENTER	7/10/75				7/14/75	GUILTY	100	50			
320200 569-58-3138 KODIAK			MALE	E-BU H-BR 10/17/43 160 5-8			RES								
	E-75-03201	7/16	40 CF01 - COMM FISH CLOSED WATER 3:25P SELDEN		7/16/75	Y		1248	7/21/75		DIS				
18350 000-00-0000															
	E-75-03201	7/16	30 CF01 - COMM FISH CLOSED WATER 3:25P SELDEN		7/16/75	Y			7/21/75		DIS				
183508 000-00-0000 KODIAK			MALE	E-BR H-BR 1/20/18 170 5-8											
	E-75-03201	7/16	20 CF01 - COMM FISH CLOSED WATER 3:25P		7/16/75			1249	7/21/75		DIS				
18350 000-00-0000 KODIAK			MALE		5/12/55	180	5-11								
	D-76-07024-X		CF25 - MINIMUM DISTANCE BETWEEN GEAR												
21335 WALDEN 574-20-8908 NINILCHIK	KENAI	6/30	1:15P CARPENTER		6/29/76	N	N	NOLO RES	6/30/76	N GLTY	DIS	DIS			
			MALE	E-BU H-BL 11/30/52 155 5-7											
	D-76-07023-X		CF25 - MINIMUM DISTANCE BETWEEN GEAR												
21335 WALDEN 574-12-3401 ANCHORAGE	KENAI	6/30	1:15P CARPENTER		6/30/76	N	N	NOLO RES	6/30/76	GUILTY	100	100			
			MALE	E-BR H-BR 3/16/17 200 5-10											
	E-75-03201	7/16	10 CF01 - COMM FISH CLOSED WATER 3:25P		7/16/75	N		1250	7/21/75		DIS				
18350 000-00-0000 KODIAK			MALE		9/16/20	180	5-8								
	E-75-03120-K		CF11 - FISH TANNER CRAB W/O PERMIT CARPENTER		12/26/75	N	N	GUILTY	1/05/76	GUILTY	100	25			
1643140A CARPENTER 574-16-1803 KODIAK	KODIAK	7/01													
			MALE	E-BR H-BR 5/28/45 180 5-10				RES							
	E-75-03095-K		CF02 - C/F CLOSED PERIOD												
93200 BYRD 536-26-2201 ANCHORAGE	KODIAK	6/25	6:55A BYRD		9/03/75	N	N	N CLTY	10/22/75	GUILTY	SIS				
			MALE	E-BU H-BL 6/09/29 230 5-10				RES							
	E-75-03035		CF11 - NO ENTRY PERMIT/TANNER CRAB												
1643140A BYRD 542-40-7478 KODIAK	KODIAK	6/19	BYRD		9/14/75	N	N	GUILTY	50 10/16/76	GUILTY	50	50			
			MALE	E-HZ H-BK 10/10/37 200 5-9				RES							
	D-76-07220-X	02	CF61 - UNMARKED VESSEL												
21336 WALDEN 574-14-6283 KENAI	KENAI	7/05	3:45P HOEKMAN		9/01/76	N	N	GUILTY	9/03/76	GUILTY	50	50			
			MALE	E-HZ H-BR 3/28/42 180 5-5				RES							
	D-76-07220-X	01	CF61 - UNMARKED GEAR												
21334 WALDEN 574-14-6283 KENAI	KENAI	7/05	3:45P HOEKMAN		9/01/76	N	N	GUILTY	9/03/76	GUILTY	50	50			
			MALE	E-HZ H-BR 3/28/42 180 5-5				RES							
	D-76-07208-X		CF01 - COMMERCIAL FISH IN CLOSED AREA												
1605920A WALDEN 536-30-7941 SOLDOTNA	KENAI	7/26	4:30P THOMPSON		7/29/76	N	N	GUILTY	8/24/76	GUILTY	200	200			
			MALE	E-BR H-BR 11/14/34 180 6-2				RES							

VIOLATION CODE	COMPLAINT SIGNED BY	LOCATION	VIOLATION DATE	TIME	CITED BY	CITED DATE	SEIZED EQ	SEIZED OOP	PLEA	USC NO BAIL	TRAIL IM DATE	VERDICT	FINE TOTAL	FINE NET	JAIL TOTAL	JAIL NET	MO LI REV
		D-76-07185-X		CF25 - EXCEEDING MAXIMUM 105 FATHOMS													
21331D WALDEN		KENAI	8/02	2:15P	REED	8/02/76	N	N	GLTY		10/07/76	GUILTY	50	50			
525-70-2432 KENAI				MALE	E-BR H-BR	4/29/37	160	5-10		RES							
		D-76-07154-X		CF01 - COMM FISH CLOSED AREA													
1605920A WALDEN		KENAI	7/26	4:20P		7/28/76	N	N	NOLO		8/05/76	GUILTY	350	350			
574-28-1767 SOLDOTNA				MALE	G-GN H-BL	6/10/55	120	5-5		RES							
		D-76-07150-X		CF01 - COMM FISHED CLOSED AREA													
1605920A WALDEN		KENAI	7/26	4:20P	HOEKMAN	7/28/76	N	N	GUILTY		8/03/76	GUILTY	250	250			
556-03-7873 KLAMATH FALLS OR				MALE	E-BR H-BK	10/01/19	200	6		N-RES							
		I-76-07149-K		CF61 - COMM FISH UNMARKED NET						11801							
33348 YOUNGREN		KOTZEBUE	8/03	10:00P	YOUNGREN	8/04/76	Y	Y	GUILTY		8/05/76	GUILTY	25	10			
574-16-0350 KOTZEBUE				MALE	E-HZ H-BR	6/02/45	200	5-11		RES							
		I-76-06657-F		CF22 - COMMERCIAL FISHING W/O LICENSE													
39110A BUNSELMEIER		FAIRBANKS	7/24		BUNSELMEIER	8/06/76	N	N	GUILTY		8/11/76	GUILTY	25	25	SIS		
494-44-8645 FAIRBANKS				FEMALE	E-HZ H-BR	6/29/42	170	5-6		RES							

CF TOTAL ARRESTS 525 TOTAL FINES 219,024 AV. 417 NET FINES 103,513 AV. 197 MULTIPLE COUNTS 221

CATEGORY: NATURAL RESOURCES
AGENCY: PUBLIC SAFETY
PROGRAM: PROTECTION
SUB-PROGRAM: PROTECTION DETACHMENTS
05-12-01-01-00
12410305010I

EXPEND. AND FUNDING RECORD	(01) FY74 ACT	(02) FY75 ACT	(03) FY76 ATH	(04) FY76 RP	(05) FY76 SUP	(06) MAINT.	(07) REQUEST	(08) GOVERNOR	(09) HOUSE	(10) SENATE	(11) F.C.C.	(12) SPC APPR	(13) FIS NOTE
01 PERS SERVICE		1761.1	2085.2			3417.0	3417.0	2572.0	2572.0	2516.8	2516.8		
02 TRAVEL		120.4	110.0			155.7	155.7	133.7	133.7	134.1	134.1		
03 CONTRACTUAL		478.0	600.0			736.2	736.2	567.9	482.5	567.9	567.9		
04 COMMODITIES		79.2	84.2			44.1	44.1	41.7	41.7	40.0	40.0		
05 EQUIPMENT		19.5	65.0			177.8	249.5	99.3	99.3	99.3	99.3		
06 LAND, BLDGS								61.1	61.1	61.1	61.1		
07 GRANTS, CLMS													
08 MISC													
** TOTAL EXP.		2458.2	2944.4			4530.8	4602.5	3475.7	3390.3	3419.2	3419.2		
09 I-A TRANSFER		238.4	398.3			504.7	504.7						
10 FEDERAL RECP													
11 GF MATCH													
12 GENERAL FUND		2458.2	2944.4			4530.8	4602.5	3475.7	3390.3	3419.2	3419.2		
13 PROGRAM RECP													
14 OTHER FUNDS													
15 FULL-TIME		62.0	69.0			87.0	87.0	69.0	69.0	69.0	69.0		
16 PART-TIME													
17 TEMPORARY		11.0	9.0			9.0	9.0	9.0	9.0				
18 MAN MONTHS		876.0	936.0			1152.0	1152.0	936.0	936.0	936.0	936.0		

NEW POSITION RECORD SEGMENTS

POSITION TITLE	LOCATION	TYP	PRI	NP	S&B COST	OTH.COST	TOT.COST	FED.FUND	GEN.FUND	OTH.FUND	GV	HS	SN	FC	FN

NO ENTRIES

TEMPORARY MAN MONTHS - 108

Most effective tool - creek robbers

1. airplane surveillance & Boat patrols
2. any other methods

Biologist agree "stake-out"

stream guards are used in bigger bays

S. E.	0	495 hours stake out
Yakutat		
P.W.S.	0	
C.I.		
Chain	1	
Kodiak	1-2	
Bristo Bay		
AYK		

Stake out crews in 1960 started

1976

D.A.s — are ineffective

1963 - 17 — 59 temporaries 976 a month
1400 a month
1976 9 — 11 Aides

the officers switch b

HB 111 – Osterback

"stake-out crew"

letting the fishermen capture fish before taking action

Problem isn't stake out → it's waiting until after the act

Jury trial — on case on Peninsula
Bay Pt on Unga Is

Col Wolstad + Frank Sharp

(1) Preserve sample of fish for evidence

80% of violations – fish are released

~~~ Aides are instructed ~~to~~ to arrest when net goes overboard

1. Some cases proceed with no fish
2. Open breast line
3.
~~~

1. Salmon runs in Alaska Peninsula

2. fish confiscated by regions

3. A. G. letter

STATE of ALASKA

MEMORANDUM

TO: Richard L. Burton
Commissioner
Department of Public Safety
Juneau

DATE : February 16, 1977

FROM: Col. Fred M. Woldstad
Director
Fish & Wildlife Protection
Anchorage

SUBJECT: E-76-0811/Controversial Incident - House Resources Committee.

I have taken the liberty of summarizing a rather lengthy investigation report that includes a number of statements attesting to identical information. Two seine vessels were involved and six defendants:

F/V "Andronica"

William Dushkin - Captain, Sand Point.
Carl R. Furguson - Crewmember, Sand Point.
Jack Foster, Jr. - Crewmember, Sand Point.

F/V "Norse Maid"

Carl G. Carlson, Jr. - Captain, Sand Point.
Charles G. Gundersen - Crewmember, Sand Point.
Henry P. Nielsen - Crewmember, Sand Point.

On July 23, 1976 at 10:30 a.m., a stakeout team composed of Officer Steve Case and Officer Mike Webber was placed at Bay Point by a Department of Public Safety Goose flown by Ed Fleek. They set up camp about a mile from the creek at Bay Point.

At approximately 9:30 p.m., Officer Case observed two boats heading toward Bay Point. Both boats were white in color and towing skiffs. The boats were later identified as the "Andronica" and the "Norse Maid". The two subject vessels anchored up, side by side, about 30 yards from the entrance to the lagoon at Bay Point (Nigger Head). At approximately 10:15 p.m., two skiffs left the anchored boats and entered into the lagoon. Each skiff contained two men.

Shots were fired from one skiff into the brush around the edge of the lagoon, apparently by a semi-automatic rifle. The two skiffs then returned to the "Andronica" and "Norse Maid".

At 11:00 p.m., four skiffs left the subject boats and proceeded into the waters of the lagoon at Bay Point. Officer Case moved around to where he could observe what they were doing. He observed the skiffs engaging in making two sets with their commercial type salmon seines, taking salmon from the closed waters at Bay Point. At 11:25 p.m., one skiff headed back to the anchored vessels. At midnight the other three seine skiffs followed. Officer Webber observed that two of the boats were low in the water and had what appeared to be a seine with a bulge in it alongside. At 12:45 a.m.,

Officer Case, who has commercial fished in the past, heard the hydraulics start up, as if the brailer was in operation on the subject vessels. At 3:00 a.m., the two vessels pulled anchor and left Bay Point.

On 7/24/76, the Captain of the P/V "Enforcer" was patrolling in a skiff at Settlement Point with Fish and Wildlife Aide Shaul when he observed the "Norse Maid" pull their anchors and head off toward the North.

Gunnar Hamren, the Captain of the tender "Logger", reports in his statement that the F/V "Norse Maid", Captained by Carl Carlson, Jr., got into the line behind his tender at 11:00 p.m. on 7/24/76. About midnight the "Norse Maid" pulled up alongside the Logger with approximatley 7,000 salmon on board. Carlson asked Hamren to split his load with the "Andronica", stating they had been fishing together. The crew from the "Andronica" came over and helped take the salmon off the "Norse Maid". The "Logger" was anchored in Canoe Bay.

Mrs. Bertha Jean Hamren, who made out the ADF&G Fish Tickets #393789 and #393319, in her statement relates a conversation with Carlson in which he told her that the "Andronica" and "Norse Maid" had been fishing together and he wanted to split his load with the "Andronica". The fish tickets were made out at approximately 12:30 a.m. on 7/25/76. Later that day the skipper ot the "Andronica" came over and signed his fish ticket, #393789. The poundage on the fish tickets totaled 32,255; 16,127 lbs. to William Dushkin on the "Andronica" and 16,128 lbs. to the "Norse Maid", skippered by Carl Carlson, Jr. James Harrington, a crew member on the "Logger", was present when the Captain of the "Andronica" signed his fish ticket the morning of 7/25/76.

William Fishell was a Fish and Game employee sampling the catches on board the "Logger" when the subject fish were delivered. He states he remembers one boat bringing in a large number of salmon and states that without the delivery made by the "Norse Maid" figured into the daily catches, the boat average was 1,149.5 salmon per boat. The catches reflected for the "Norse Maid" and the "Andronica" were over three times the average for boats delivering to the "Logger" on the day in question.

On 7/26/76 at 12:20 p.m., the F/V "Norse Maid" was boarded soon after it moored at the fuel dock in Sand Point. Corporal Winn advised the Captain and crew of their legal rights and that they would be charged for seining in closed waters. Also on 7/26/76, Captain Sharp flew to Canoe Bay and boarded the F/V "Andronica", advised the Captain and crew of their rights and that they would be charged for seining in closed waters. While aboard the "Andronica" Captain Sharp observed a 30 caliber carbine semi-automatic weapon with a 30 shot clip and during the conversation the owner of the weapon was identified as Jack Foster, Jr.

The six defendants were cited to the Sand Point District Court and each entered a not guilty plea requesting a jury trial. Subsequent trial in Sand Point before a jury found all six defendants not guilty. Stated cause for the not guilty verdict was that the state did not prove fish were taken by the skiffs in the stream mouth, and the jury was not advised that "take" is also defined as "attempting to take".

Two additional statements are found in the report which are pertinent to the character and honesty of the defendants involved. Both are statements of Fish and Wildlife Aide Steve Case.

"On the 4th of July, 1976, at the New England Reservoir in Sand Point, I was testing outboards and rafts when we were approached by Charles G. Gundersen on the subject of bribery and asked what our salary was and if we were getting paid enough for watching the streams. I said, "yes, we were getting paid enough". Then he approached me with an offer for $2,000.00 or $3,000.00 for turning my back while they made a couple sets in the creek. He kept saying he would make it good to me for twice the amount I'm getting paid. He said that if I would get hold of him later we would talk real business and a part of $2,000.00 or $3,000.00. Then we departed the area."

On August 29, 1976, Charles G. Gundersen approached Officer Steve Case and Officer Jim Johnston stating that if the State lost their case, he would sue for false arrest. He also advised that they better be careful or they would leave Sand Point in a pine box. Gundersen stated he was passed out drunk when the skiff from the "Norse Maid" went up into the creek. Gundersen was drunk while making the statements.

FMW:rp

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 111

Title An Act, relating to stream surveillance for fisheries violations.

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected NRMEC

Budget Request Unit(s) Affected Fish & Wildlife Protection Detachments

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		804.6	804.6	804.6		
200	TRAVEL						
300	CONTRACTUAL		89.4	89.4	89.4		
400	COMMODITIES		89.4	89.4	89.4		
500	EQUIPMENT		318.1	63.0	63.0		
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		1,301.5	1,046.4	1,046.4		

FUNDING (Thousands of Dollars)

GENERAL FUND		1,301.5	1,046.4	1,046.4		
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY		149	149	149		

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions: Salary for all positions estimated at Juneau rate ($7.50) Benefits of 9.5% were not included. Actual salary without benefits would range from $7.58 to $9.67 per hour for each Range 12 Protection Aide. Overtime limited to 15 hours per week for each stream guard. Training cost, logistics costs not included. Replacement equipment budgeted at 20% per year. All costs in constant dollars (FY-77 costs).

IV. DATE Feb. 23, 1977 PREPARED BY Trygve R. Herrmann, Administrative Director

AGENCY Department of Public Safety

PHONE 465-4322

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Commissioner Brooks, Dept. of Fish & Game

33-001 (Rev. 10/76)

FISCAL ANALYSIS.

(Attachment)

1. CHANGES IN PERSONNEL.

To provide a minimal level of surveillance to spawning activity on a stream guard concept, temporary man months must be increased to the following level:

SOUTHEASTERN ALASKA:
Ketchikan, Craig, Wrangell, Petersburg, Sitka, and Juneau.

	60 temp. employees at 3 mo. each.
Yakutat	5 temp. employees at 3 mo. each.
Cordova	12 temp. employees at 4 mo. each.
Valdez	6 temp. employees at 3 mo. each.
Seward	10 temp. employees at 3 mo. each.
Homer	8 temp. employees at 3 mo. each.
Kodiak	32 temp. employees at 3 mo. each.
Sand Point and westward	16 temp. employees at 3 mo. each.

TOTAL TEMP. EMPLOYEES -- 149 TOTAL TEMP. MAN MONTHS - 459

The following is an estimate of the costs of hiring, equipping and maintaining one stream guard for a 10 week period:

EQUIPMENT

Tent, 10 x 12 white wall		100.00
Boat, Avon S-400 Sportboat, 12' 4" (40 h.p. rated)		1,200.00
Motor, 25 h.p. Johnson, Short Shaft, Manual Start		520.00
Coleman Lantern		30.00
Coleman Stove		30.00
Foam Mattress		35.00
Tent Frame		200.00
Cooking Utensils		20.00
Gas cans, funnels, misc. gear		100.00
	Sub Total	$2,135.00
Air Charter - Minimum 6 trips including setting up camp		600.00
Food - 10 weeks at $50.00 per week		500.00
Fuel - White gas, outboard fuel		100.00
		1,200.00
(DOES NOT INCLUDE 9.5% BENEFITS)		
Wages - 12 weeks - 37.5 straight time (hourly rate $7.50)		3,375.00
Actual salaries range from $7.58 to $9.67 per hour) 15 hours overtime/week $11.25		2,025.00
	TOTAL	$ 8,735.00 each

This figure does not include the cost of training or the cost of maintaining the man in the field. Depending on the number of stream guards in the field, it will take one to two men to handle engine repairs, buy groceries, run errands and chauffeur.

HB

124

RICE, HOPPNER & HEDLAND
ATTORNEYS AND COUNSELORS AT LAW
SUITE A-330 WENDELL STREET
P.O. BOX 2551
FAIRBANKS, ALASKA 99707
(907) 452-1201

JULIAN C. RICE
LLOYD I. HOPPNER
JOHN S. HEDLAND
GEORGE S. SMALL
MILLARD F. INGRAHAM
HUGH W. FLEISCHER
CHRISTOPHER R. COOKE
SAUL R. FRIEDMAN
PATRICK T. BROWN
DAVID A. ENGELS
LINDA L. WALTON
MARK I. WOOD
NIESJE J. STEINKRUGER
ROGER BRUNNER
STEPHANIE J. COLE

CHARLES J. CLASBY
OF COUNSEL

ANCHORAGE OFFICE
1016 WEST 6TH AVENUE (99501)
(907) 279-5528

BETHEL OFFICE
P.O. BOX 555 (99559)
(907) 543-2850

VALDEZ OFFICE
P.O. BOX 486 (99686)
(907) 835-4385

December 30, 1976

Representative Steve Cowper
Pouch V
Juneau AK 99811

Re: Uniform Comparative Fault Act

Dear Steve:

Enclosed please find a copy of Uniform Comparative Fault Act with my proposed modifications. I have already spoken to you generally about the Act.

As I mentioned, the Act first came to my attention as a member of the Alaska Bar Association Civil Rules Committee. The Act was sent to us by Chief Justice Boochever with the request that we review it with the idea, I assume, of adopting it as a Civil Rule. All members of the committee felt they were disqualified from acting with regard to the Act because all had cases pending that would be directly affected by some portion of the Act. Furthermore, all members of the committee felt that the matters contained in the Act were more appropriately the subject for legislation rather than rules. Regardless of what our committee felt, I believe it can be inferred from Chief Justice Boochever's request to the committee that if the legislature does not adopt some sort of legislation implementing comparative negligence in Alaska, the court will do so by rules.

The main argument that I have with the proposed Act is in section 3. Under section 3, the common law doctrine of joint and several liability of joint tort feasors is abolished and all parties, including the injured party, must share proportionately in the insolvency of an uninsured or otherwise insolvent tort feasor. This is not the law in other jurisdictions that have considered the problem. See 57 Am. Jur. 2nd, Negligence §435, especially notes 12, 13, and 14, a copy of which I am enclosing. The whole theory of comparative negligence is that a tort victim should be penalized in recovery from a tort feasor in an amount equal to his contribution to his own injuries. It would be contrary to the humanitarian spirit of the doctrine to further penalize the tort victim for the

insolvency of one or more tort feasors. Furthermore, the proposed Act, in practice, would severely complicate litigation. I can imagine in every action filed under the proposed Act, that defendants would attempt to join every potential insolvent defendant around in an effort to decrease their own liability. I have had many cases where potential defendants are not joined because they are uninsured or otherwise insolvent and to join them under such circumstances would merely complicate the litigation. Defendants in such actions have not joined them either because, under the rule of joint and several liability, they know that they could not collect contribution from them. But if there is no joint and several liability, there would be very good reason for defendants to join insolvent defendants in an effort to reduce their own liability to the plaintiff.

The other changes that I have made are strictly technical. I have everywhere changed "plaintiff" to "claimant" and "defendant" to "tort feasor". The reason for this is that often a tort claimant may be cast in the role of a counterclaiming defendant and a tort feasor may be cast in the role of a plaintiff. In section 5, I have adopted alternative 1, for the reasons stated in the second paragraph of the comments, and for the reason that some defendants, may be uninsured but have assets or be self-insured. I believe that the amendment to the Uniform Contribution Among Tort Feasors Act should be adopted.

I wish that you would attempt to get this Uniform Act, as amended by me, adopted as law. I have no particular vanity about draftsmanship and would be agreeable to any language so long as the end is accomplished.

If you have any questions, please do not hesitate to call me collect, either at the office (452-1201) or at home (456-5000). I would like to go to Juneau to testify at any important hearings regarding the Act and would appreciate it if you would advise me when any are scheduled.

Yours very truly,

RICE, HOPPNER & HEDLAND

Millard F. Ingraham

MFI/mcb
Enclosures

against one or more of the defendants.[7] However, even though apportionment of negligence on a percentage basis among the parties to the action may be required,[8] such an apportionment may not be controlling on the question whether all, or only some, of the defendants may be held liable for the damages suffered by the plaintiff as diminished by his proportionate negligence under an "equal to or greater than" type of statute which is construed as designed to serve the same basic purpose as the so-called "Prosser Act,"[9] although its application is limited to cases in which the plaintiff's negligence is less than 50 percent of the cause of his damage.[10] Where such a statute is so construed, the plaintiff, if he can recover anything, can recover his damages, diminished by the percentage his negligence contributed to his injuries, against all the defendants, including those whose negligence equaled his.[11]

Whether or not the jury's apportionment of negligence among the parties to the action has any bearing on the right of the plaintiff or claimant to recover diminished damages from all, or only from some, of the defendants, the general rule appears to be that once a determination is made that the injured person or claimant has a right to recover against any of those whose negligence contributed proximately to his injuries the amount of his damages diminished in proportion to the negligence attributable to him, all the tortfeasors who remain liable are liable to the injured person for the entire amount recoverable.[12] In one jurisdiction the rule is set forth in the comparative negligence statute.[13] Therefore, even though recovery against one joint tortfeasor who is liable for the injuries suffered by the claimant is impossible or improbable because he is uninsured and judgment proof, the other tortfeasor or tortfeasors are liable for the full amount recoverable, even though the causal negligence attributable to them is relatively minor.[14]

7. § 434, supra.

8. Fitzhugh v Elliott, 237 Ark 88, 371 SW 2d 533, stating that the jury must apportion negligence among the parties to the action on the basis of 100 percent.

9. Dean Prosser, in his article entitled "Comparative Negligence," 51 Mich Law Review, page 465, recommends a comparative negligence statute which, in providing for recovery despite contributory negligence, would require that damages awarded be diminished in proportion to the amount of negligence attributable to the plaintiff or person injured, and which, except for an added provision for special verdicts, embodies the "pure" contributory negligence concept, which is discussed in §§ 443 et seq., infra.

10. Walton v Tull, 234 Ark 882, 356 SW 2d 20, 8 ALR3d 708.

11. Walton v Tull, supra.

12. Walton v Tull, supra; Chille v Howell, 34 Wis 2d 491, 149 NW2d 600 (holding that the comparative negligence statute did not change the common-law rule that every joint tortfeasor who is liable at all is liable for such damage as the injured person is entitled to recover).

The refinement of the rule of contribution between joint tortfeasors does not apply to or change the plaintiff's right to recover against any defendant tortfeasor the total amount of his damage to which he is entitled. Bielski v Schulze, 16 Wis 2d 1, 114 NW2d 105.

13. Peterson v Minneapolis, 285 Minn 282, 173 NW2d 353, 37 ALR3d 1431, wherein the court set forth the statute which in pertinent part provides that where "there are two or more persons who are jointly liable, contributions to awards shall be in proportion to the percentage of negligence attributable to each, provided, however, that each shall remain jointly and severally liable for the whole award."

14. Walton v Tull, 234 Ark 882, 356 SW 2d 20, 8 ALR3d 708, recognizing that this conclusion may require a single defendant to pay the entire judgment even though his negligence was comparatively slight, where some of the tortfeasors are insolvent or unavailable, leaving the remedy, if any, for relief from such disproportionate liability to action under the Uniform Contribution Among Tortfeasors Act.

UNIFORM COMPARATIVE FAULT ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS EIGHTY-FIFTH YEAR
ATLANTA, GEORGIA

JULY 31 - AUGUST 6, 1976

UNIFORM COMPARATIVE FAULT ACT

With Comments

The ideas and conclusions herein set forth, including drafts of proposed legislation, have not been passed upon by the Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Committee, Reporters or Commissioners. Proposed statutory language may not be used to ascertain legislative meaning of any promulgated final law.

SPECIAL COMMITTEE ON UNIFORM COMPARATIVE FAULT ACT

John W. Wade, Vanderbilt University, School of Law, Nashville, TN 37203, Chairman

Francis Bergan, 5 Circle Lane, Albany, NY 12203

Windsor Dean Calkins, 1163 Olive Street, Eugene, OR 97401

Floyd R. Gibson, 837 U. S. Courthouse, Kansas City, MO 64106

Elmer R. Oettinger, Institute of Government, University of North Carolina, Chapel Hill, NC 27514

James H. Clarke, 800 Pacific Building, Portland, OR 97204, Chairman, Division F, Ex Officio

James M. Bush, 363 North First Avenue, Phoenix, AZ 85003, President, Ex Officio

REVIEW COMMITTEE ON UNIFORM COMPARATIVE FAULT ACT

Lindsey Cowen, Case Western Reserve University, Law School, Cleveland, OH 44106, Chairman

John A. Chanin, 700 Bishop Street, Honolulu, HI 96813

John F. Hayes. P. O. Box 705, Hutchinson, KS 67501

Richard L. Jones, 3153 Warrington Road, Birmingham, AL 35223

John R. Parker, P. O. Box 27, Clinton, NC 28328

as great as" defendant's negligence, (3) plaintiff's negligence "not greater than" defendant's negligence, and (4) the "pure type," apportionment allowed even though plaintiff's negligence exceeds that of defendant.

The slight-gross form can be dismissed as having no current support. The second and third are "modified" forms, differing from each other only in the situation where both parties are found to be 50% negligent. Number 2 would not allow recovery then; number 3 would allow recovery and seems the better of the two.

The real issue is between the modified forms and the pure form (number 4). The two modified forms may possibly work satisfactorily in the case in which only one party is hurt and he sues the other, and might perhaps be the choice if these were the only cases to arise. But when there are multiple plaintiffs and cross-claims, the modified form becomes entirely inadequate. To compare the two forms, take variations of a case in which A and B were both negligent and both injured. Assume A's negligence is found to be 25% and B's is found to be 75%.

Case (1). Assume each party suffers $8,000 damages. Under the modified form, A recovers $6,000; B recovers nothing. A's loss is $2,000 (all his own), or 12.5% of the total of $16,000. B's loss is $14,000 ($6,000 to A, and $8,000 of his own) for 87.5% of the total. Under the pure form (assuming no set-off), A recovers $6,000; B, $2,000. A's loss is $4,000 ($2,000 to B and $2,000 of his own) for 25% of the total; B's loss is $12,000 ($6,000 to A and $6,000 of his own) for 75% of the total.

Case (2). Assume A suffers $4,000 damages; B, $12,000. Under the modified form, A recovers $3,000; B, nothing. A incurs $1,000 (all his own) for 6% of the total; B incurs $15,000 ($3,000 to A and $12,000 of his own) for 94% of the total. Under the pure form, A recovers $3,000; B, $3,000. A incurs $4,000 loss ($3,000 to B and $1,000 of his own) for 25% of the total; B incurs $12,000 ($3,000 to A and $12,000 of his own) for 75% of the total.

Case (3). Assume A suffers $12,000 damages; B, $4,000. Under the modified form, A recovers $9,000; B, nothing. A incurs $3,000 loss (all his own) for 19% of the total; B incurs $13,000 loss ($9,000 to A, $4,000 of his own) for 81% of the total. Under the pure form, A recovers $9,000; B, $1,000. A

incurs $4,000 loss ($1,000 to B and $3,000 of his own) for 25% of the total; B incurs $12,000 loss ($9,000 to A and $3,000 of his own) for 75%.

Case (4). Now change the fault percentage. Assume that each party suffered $8,000 damages and that A was 49% negligent; B, 51%. Under the modified form, A recovers $4,080; B, nothing. A incurs $3,920 loss (all his own) for 24.5% of the total; B incurs $12,080 loss ($4,080 to B and $8,000 of his own) for 74.5% of the total. Under the pure form, A incurs $7,840 loss ($3,920 to B and $3,920 of his own) for 49% of the total; B incurs $8,160 loss ($4,080 to A, and $4,080 of his own) for 51% of the total.

Thus, it is apparent that the pure form always divides the total loss according to the established fault percentage, while the modified form fluctuates wildly and very unfairly.

While the pure form of comparative negligence is not presently the majority form, it has grown very substantially in the 1970's and is now sustained by an impressive list of authorities. First enacted in the Federal Employers Liability Act in 1908, it was later adopted in other Federal Acts. Mississippi adopted the pure form in 1910. It has also been adopted by legislation in New York (1975), Rhode Island (1971) and Washington (1973). In three states it has been judicially adopted by the supreme court. Kaatz v. State, 540 P.2d 1037 (Alas. 1975); Li v. Yellow Cab Co., 13 Cal. 3d 804, 119 Cal. Rptr. 858, 532 P.2d 1226; Hoffman v. Jones, 280 So.2d 431 (Fla. 1973). It has also just been adopted by the U. S. Supreme Court for admiralty cases. United States v. Reliable Transfer Co., 421 U.S. 397 (1975). The pure form is also adopted in Great Britain, most of the states and provinces in Australia and Canada, and other common law jurisdictions.

UNIFORM COMPARATIVE FAULT ACT

Section 1. In a tort action for damages based on negligence, recklessness, or strict liability (including breach of warranty), ~~plaintiff~~ claimant's contributory fault does not bar recovery but has the effect of diminishing his damages proportionately according to his own fault or the fault attributable to him. This section applies to a tort action based upon a statute, unless otherwise expressed or construed. In a derivative action or an action for wrongful death, ~~plaintiff~~ claimant's damages are diminished according to the fault of any person whose conduct might otherwise have barred the liability. This section applies whether or not the contributory fault previously constituted a defense and replaces such common law principles as last clear chance and implied assumption of risk.

COMMENT

Torts covered by the Act. The proposed act applies to tort actions for negligence, recklessness and strict liability. As to recklessness, the common-law rule that contributory negligence did not bar recovery or diminish damages was an overcure. A comparison of the relative fault of the parties is appropriate here.

There is more question about applying the act to strict liability, since the theory is that the defendant is liable regardless of fault. But for strict liability for both abnormally dangerous activities and for products there is strong similarity to negligence declared by the court as a matter of

law (neg[illegible] trier of fact will have serious difficulty [illegible] of fault. In addition, it would be highly anomalous in a products liability case to have the damages mitigated if the plaintiff elects to sue in negligence, but to allow him to recover full damages if he elects instead to sue for strict liability in tort. The two actions should be treated alike, especially when they are separate counts in the same complaint. There would also be anomaly in diminishing the amount of the plaintiff's recovery for contributory negligence if the defendant is found to be negligent but in allowing the plaintiff to recover his full damages in the absence of a finding of defendant's negligence.

There is a problem about how to handle an action for breach of implied warranty. The Act is not intended to include actions which are fully contractual in their gravamen and in which the plaintiff is suing solely because he did not obtain what he contracted to receive. But many actions for breach of warranty sound primarily, or partially, in tort -- especially when the damage involves physical harm to person or property. These actions should be included. The essential nature of the breach-of-warranty action varies greatly in different states, and the language may have to vary for some states. The words "strict liability (including breach of warranty)" are intended to indicate that the act includes an action for breach of warranty which comes within the common concept of an action of strict tort liability for products.

By conscious decision, the Act does not apply to intentional torts. It seems inappropriate in that situation, and no state has attempted to extend the concept of comparative fault to intentional torts.

For certain types of torts, such as nuisance, the defendant's tortious conduct may be intentional, negligent or subject to strict liability. In the latter two instances the Act would apply, but not in the case of intentionally inflicting the injury on the plaintiff. A similar analysis applies to actions for misrepresentation.

"Contributory fault" is treated as a term of art referring to fault on the part of the plaintiff (or one under whom he claims), and which has a causal relationship to his injury.

"Fault attributable to the plaintiff" is to take care of imputed negligence, as in the case of respondeat superior.

Comparison of fault of parties. In comparing plaintiff's fault with that of the defendants, there are a number of im-

plications arising from the concept of fault. The conduct of plaintiff, or of any defendant, may be more or less at fault, depending on whether it was mere inadvertence or acting with an awareness of the danger involved, on the magnitude of the risk created by the conduct on the significance of what he was seeking to attain by his conduct, and on his superior or inferior capacities. The rule of law that a particular defendant owes a higher degree of care (as in the case of a common carrier of passengers) or a lesser degree of care (as in the case of an automobile host in a state having a valid automobile-guest statute) is important in determining whether he is liable at all; but if his liability has been established, the rule does not play a part in determining the relative proportion of fault of this party in comparison with the others.

On the other hand, in determining the relative fault of the parties, the trier of fact may give consideration to the relative closeness of causal relationship, so that the concept of comparative fault absorbs the causation elements of the common law doctrine of last clear chance. This holding in such cases as Cushman v. Perkins, 245 A.2d 846 (Me. 1968); and Lovesee v. Allied Dev. Corp., 45 Wis.2d 340, 170 N.W.2d 196 (1970) seems properly applicable to this Act.

"Action based on a statute" includes wrongful death and survival acts, dram-shop acts, dog-bite statutes, actions of negligence per se based on criminal statutes, etc. An attempt to enumerate them in the statute would almost inevitably leave some out. "Unless otherwise expressed or construed" is to keep from repealing by implication and to give a court the authority to construe a statute such as a child-labor act to prevent any mitigation if it thinks the policy of the act requires protection of a class of persons even against their own weaknesses or inadequacies.

"Whether previously constituting a defense or not" includes last clear chance, assumption of risk (to the extent that it is based on fault), contributory fault for recklessness or strict liability, etc., plus all cases where contributory negligence was a complete defense. Consent to defendant's conduct is not regarded as a form of contributory fault.

Section 2. In a tort action involving contributory fault, the court, unless otherwise requested by the parties, shall instruct the jury to give answers to special interrogatories [to render special verdicts], or make findings itself if there is no jury, indicating:

(1) the amount of damages each claimant would recover if contributory fault were disregarded, and

(2) the percentage of the fault for each party to the action as compared with the combined fault of all parties to the action. For this purpose, the court may determine that two or more persons are appropriately treated as a single party.

COMMENT

These questions are expected to reach percentages whose total for the relevant parties (plaintiffs or defendants) will add up to 100%.

"Parties to the action" includes third-party defendants, whether made defendants by the original plaintiff or not.

The limitation to "parties to the action" means ignoring other persons who may have been at fault with regard to the particular injury but who have not been joined as parties. This is a deliberate decision. There is no way of telling whether that person was actually at fault or what amount of fault should be attributed to him, or whether he will ever be sued, or whether the statute of limitations will run on him, etc. An attempt to settle these matters in a suit to which he was not a party would not be binding on him as res judicata. If a separate suit is necessary to settle these issues in any event, there seems to be no point in speculating on the matter in the first suit. The second suit would probably be brought by a defendant in the first suit who is seeking contribution; other defendants in the first suit should be willing to join with him, and the plaintiff might also be joined as a party. Nothing is said about this in the Act because the common law is adequate to cover it.

The court should have, without providing for it in this section, the usual powers of setting aside or modifying a verdict if it is internally inconsistent or shows bias or prejudice, etc. On the same basis as the remittitur principle, a court might indicate its intent to set aside a percentage allocation unless the parties agreed to a somewhat different one.

SECTION 3. Contribution rights among multiple ~~defendants~~ tort feasors are determined in accordance with the percentage of fault of each ~~defendant~~ tort feasor, as found by the trier of fact. The court shall enter judgment on the basis of these rights and findings made under Section 2. ~~If a judgment against a party cannot be collected within [one year] after the judgment becomes final, the responsibility for the amount involved is distributed among the other parties in proportion to their relative fault.~~ All tortfeasors liable to claimant are jointly and severally liable for all damages to which claimant is entitled. See Ch. 16.

COMMENT

A state which does not already have a practice of granting contribution between joint tortfeasors may wish to start the section with language like this: "The right of contribution exists as among multiple defendants, and apportionment is determined . . . ."

Joint and severable liability under the common law means that every defendant contributing to a plaintiff's injury is liable to him for the whole amount of the recoverable damages. This is not changed by the Act. Between the defendants themselves, however, the apportionment is in accordance with the percentages established under § 2.

Special problems exist when defendants are not liable for exactly the same injuries, as when an automobile accident victim has his injury exacerbated by negligence of the doctor treating him; but these are better handled by the trial judge in the light of the facts before him than by providing for them in the statute in advance and in the abstract.

If an award against one party is uncollectible, the plaintiff could collect at common law against any of the other defendants, who are jointly and severally liable. The last sentence in the section provides that the apportionment for the uncollectible amount will be made among all of the other parties (including the claimant) according to their relative

SECTION 4. A release or a covenant not to sue or enforce judgment, given by a ~~tort~~ claimant to a tortfeasor, does not discharge other tortfeasors liable for the same harm unless it so provides; but it reduces the claim against the others to the extent of the consideration paid for it or the amount stipulated in it, if greater. If the release or covenant is given in good faith, it discharges the person to whom it is given from liability for contribution.

See 09.16.0

COMMENT

The question of the contribution rights of Tortfeasors A and B against Tortfeasor C who settled and obtained a release admits of three answers: (1) A and B are still able to obtain contribution against C despite the release, (2) the plaintiff's total claim is reduced for the proportionate share of C, and (3) B and C are not entitled to contribution unless the release was given not in good faith but by way of collusion. Experience has shown that the first two solutions both strongly discourage settlements, though for different reasons. A careful study of the matter was made when the Uniform Contribution Among Tortfeasors Act (1955) was drafted and the third solution was adopted in § 4. This section follows that decision, though the wording is slightly different.

Alternative 1

SECTION 5. Damages awarded under this Act may be set off only to the extent that an award against one party cannot be collected.

Alternative 2

~~SECTION 5. To the extent that liability insurance is available to pay a judgment entered under this Act, damages awarded under this Act may not be set off.~~

COMMENT

If plaintiff and defendant are both found to be 50% negligent and they suffered the same amount of damages, neither party would recover anything if set-off is applied, even though they both carried liability insurance and paid for coverage. The loss is taken from the insurance companies who were paid to carry it and placed upon the parties, who paid to have it carried. Factual variations do not change the essence of the result. Set-off would thus destroy the effectiveness of the Act.

Two alternative provisions are offered. The second may raise some constitutional questions of equal protection.

SECTION 6. This Act applies to all injuries incurred after it takes effect.

SECTION 7. If any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Amendment of Uniform Contribution Among Tortfeasors Act (1955)

Amend Section 2 of the Uniform Contribution Among Tortfeasors Act to read as follows:

"SECTION 2. [Pro Rata Shares.] In determining the pro rata shares of tortfeasors in the entire liability (a) their

~~relative degrees of fault shall not be so sidered~~ their relative degrees of fault shall be the basis for allocation; (b) if equity requires, the collective liability of some as a group shall constitute a single share; and (c) principles of equity applicable to contribution generally shall apply.

COMMENT

This is needed. The Uniform Contribution Among Tortfeasors Act had assumed no comparative negligence, so that it was concerned solely with dividing the responsibility between the defendants. It had divided into halves, thirds, fourths, etc. -- a rough sort of justice, as in the former American admiralty rule for comparative negligence. If the plaintiff's diminution is determined on a percentage basis, the allocation among the defendants should be on a percentage basis, too. A mixture of the two systems will produce confusion and inequity. Some states by statute or judicial decision presently provide for contribution on the basis of fault.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE AMERICAN MOTORCYCLE ASSOCIATION, a nonprofit corporation, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent. --- VIKING MOTORCYCLE CLUB, an unincorp. assn., JERRALD KINDSVOGEL, STEPHEN ELSNER; DENNIS ALDERETTE, CHUCK ALEXANDER, PAUL ASHFORD, DON BOYER, JOHN GRANVILLE, LEE GREENWOOD, DON HARRIS, RAMON LOWE, FRED MacDOUGALL, HOYT MORROW, BICK RAINO, RON PARK, BENNY PADILLA, GARY REICHENBACK, ED SCHLUP, JIM SOVIE, ED TOMMASINO, RICHARD TRUSTY, JIM TUCKER, BILL TURNER, BOB PHILLIPS, ROB PHILLIPS, GLEN GREGOS, a minor by and through his Guardian ad litem GORDON GREGOS; GORDON GREGOS and "DOE" GREGOS, Real Parties in Interest.	2d Civil No. 49032

COURT OF APPEAL-SECOND DIST.
FILED
JAN 9 - 1967
CLERK

Lawler, Felix & Hall, Thomas E. Workman, Jr., Erwin E. Adler, and Jane H. Barrett for Petitioner.

Association of Southern California Defense Counsel, John W. Baker, Caywood J. Borror, Francis Breidenbach, Richard B. Goethals, Stephen J. Grogan, Henry E. Kappler, Kenneth E. Moes; W. F. Rylaarsdam, and Lucien A. Van Hulle as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

Jack A. Rose for Real Parties in Interest Glen Gregos, a minor by and through his Guardian ad Litem Gordon Gregos, and Gordon Gregos.

Robert E. Cartwright, Edward I. Pollock, Leroy Hersh, David B. Baum, Stephen I. Zetterberg, Robert G. Beloud, Ned Good, Arne Werchick, Sanford M. Gage, Leonard Sacks, and Joseph Posner, as Amici Curiae on behalf of Real Parties in Interest Glen Gregos, a minor by and through his Guardian ad Litem Gordon Gregos, and Gordon Gregos.

In Li v. Yellow Cab Co. (1975) 13 Cal.3d 804, our Supreme Court: (1) opened for reexamination in light of changed conditions the California statutory law of negligence to the extent that it is declaratory of the common law (13 Cal.3d at pp. 814, 821-822); (2) adopted the rule of "pure comparative negligence" in lieu of the doctrine of contributory negligence codified in Civil Code section 1714 (13 Cal.3d at pp. 827-828); (3) determined

the easy questions of the effect of the judicially adopted rule upon the doctrines of last clear chance (13 Cal.3d at pp. 824-825) and assumption of risk (id.); and (4) left the hard questions such as application of the new principle in multi-party situations to the "'trial judges of this State'" unencumbered by specific guidelines (13 Cal.3d at p. 826).

The petition for writ of mandate which is here before us raises the manner in which Li v. Yellow Cab is to be applied to the situation of multiple parties, all of whom are asserted to be negligent in a manner proximately contributing to a plaintiff's injury. Specifically, the petition concerns the right of a named defendant to bring persons not named as defendants into the action by a cross-complaint alleging the negligence of those persons and its proximate causation of the injury for which the complaint seeks to hold the defendant-cross-complainant liable.

We conclude that: (1) Li v. Yellow Cab's rule of "pure comparative negligence" fastens liability upon a person "in direct proportion to his negligence"; (2) the rule of comparative negligence requires modification of California's pre-Li doctrin of joint and several liability of concurrent tortfeasors;[1] and

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[1] We do not consider the impact of the rule of Li upon joint tortfeasors acting in concert or upon vicarious liability. Resolution of those questions is unnecessary to our decision and the matter at bench is sufficiently difficult of itself.

(3) a defendant may cross-complain to bring other persons into the action so that the proportion of his negligence may be compared to theirs and the modified rule of liability of concurrent tortfeasors applied to the situation of multiple parties.

Facts

On January 14, 1973, 16-year-old Glen Gregos was injured while participating in a cross-country motorcyle race. Acting through Gordon Gregos, his guardian ad litem, Glen filed an action to recover for his injuries. The lawsuit names as defendants the American Motorcycle Association (AMA), Viking Motorcycle Club (Viking), Jerrald Kindsvogel, Stephen R. Eisner, Continental Casualty Company of Chicago (Continental), and Does 1 through 200.

As eventually amended, the complaint is framed in six causes of action.

The first cause of action is based in negligence. It asserts that AMA, Viking, and other named defendants (excluding Continental) sponsored, managed, administered, and controlled a race for novice motorcycle riders and solicited and encouraged members of the public to participate in it for an entry fee of $5. Glen paid the entry fee and entered the race. The first cause of action claims that by reason of the negligence of the defendants in sponsoring, operating, controlling, and managing the race and in soliciting entrants, Glen suffered personal -

injuries causing damage of $3,000,000, plus the cost of future medical care.

The second cause of action asserts fraud of the named defendants other than Continental. The fraud is related to the defendants' failure to perform on promises made to Glen to instruct him in racing technique, evaluate his capability, and place him in races with entrants of similar ability.

The third cause of action seeks compensatory and punitive damages from Continental. It alleges the bad faith refusal of Continental to make payments on a $10,000 medical reimbursement policy covering injuries to participants in AMA sanctioned amateur events.

The fourth cause of action sounds in fraud and is based upon the allegedly false and untrue representation that the motorcycle race in which Glen was injured was an event officially sponsored by AMA and Viking. Continental and its agents are asserted to be parties to the fraud.

The fifth cause of action claims that the various defendants intentionally inflicted emotional distress upon Glen by causing his insurance claim against Continental to be dishonored.

The sixth cause of action alleges a conspiracy among the defendants to violate Glen's rights generally in the fashion claimed in the preceding causes of action.

AMA answered the amended complaint denying its charging allegations and asserting affirmative defenses. After an unsuccessful attempt to file a cross-complaint bringing Viking, various of its agents, and Glen's parents, one of whom is his guardian ad litem, into the case on theories of indemnity and comparative negligence, AMA filed a second motion for leave to file a cross-complaint. The proposed cross-complaint is framed in two causes of action asserted against Glen's mother and father.

The first alleges notice to Glen's parents that motorcycle competition is a dangerous sport, that the parents participated in Glen's decision to enter the event, that his entry would not have been received without parental consent, that Glen's father gave his written consent which permitted Glen's participation, that Glen's parents knew of the extent of Glen's training and negligently failed to exercise their powers of supervision over their minor child by allowing his entry in the race, and that while AMA's negligence, if any, was passive, that of Glen's parents was active. The first cause of action seeks indemnity from the parents if AMA is found liable to Glen.

The second cause of action seeks declaratory relief. It alleges that Glen has failed to join his father and mother as defendants in the action, reasserts their negligence, and asks for a declaration of the relative negligence of those who contributed

to Glen's injury is that the rule of Li v. Yellow Cab may be applied.

Believing itself bound by existing case law pre-dating Li, the trial court denied AMA's motion to file its cross-complaint. AMA petitioned this court for a writ of mandate compelling the trial court to grant its motion. Recognizing that the problem must be a recurring one in which the trial courts are in need of guidance, we issued our alternative writ.

Pre-Li Law

Prior to Li v. Yellow Cab Co., supra, 13 Cal.3d 804, California in general applied an all-or-nothing concept of negligence. If a person's negligence was a proximate cause of damage to a person or property, he was deemed responsible for the entire damage. That responsibility barred a plaintiff whose own negligence was a proximate cause of the damage from recovering any part of it. (4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 683.) That responsibility rendered a joint or concurrent tortfeasor liable for the entire damage and it was improper for a court to apportion damages among tortfeasors. (4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 35; 1 Harper & James, The Law of Torts, §§ 10.1, 10.2.) In either event, the person's negligence precluded his loss from being shifted in part to another who was also at fault. While the all-or-nothing principle was mitigated

somewhat as to plaintiffs by rules such as last clear chance (4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 714-721), and to defendants by a limited right of contribution among judgment debtors who, at the plaintiff's election, were named in the lawsuit (Code Civ. Proc., §§ 875, 876; 4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 43-49; cf. Schwartz, Comparative Negligence, § 16.7, pp. 261-263), and by a complex system of equitable indemnity to persons "secondarily" liable from persons whose liability was "primary" (4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 50-52), nevertheless the underlying California principle of negligence was founded on attaching total responsibility to each person whose lack of care contributed to the damage.

Consequences of Li v. Yellow Cab

Demise of all-or-nothing doctrine. In Li v. Yellow Cab Co., supra, 13 Cal.3d 804, our Supreme Court prospectively terminated the operation of the all-or-nothing doctrine as applied to plaintiffs seeking damages for negligence (13 Cal.3d at pp. 812-813), and replaced it with a principle "under which liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault." (13 Cal.3d at p. 813; i.e., "negligence," 13 Cal.3d fn. 6a at p. 813.) Carrying the principle to its ultimate limit, the high court opted for a rule of "pure comparative negligence" rather than the "50%

system" of comparative negligence followed by most jurisdictions which had previously abandoned the rule of contributory negligence. (13 Cal.3d at p. 827.) The court's action was taken despite recognition that the superseded rule had been codified in Civil Code section 1714. (13 Cal.3d at p. 821.)

Logical extension of the high court's action in Li, considerations of policy, and the language of the Li opinion itself point to the conclusion that the decision requires a drastic revision of the principles governing liability of concurrent tortfeasors.

Concurrent tortfeasors - traditional bases of joint and several liability. The pre-Li principle of joint and several liability of concurrent tortfeasors is founded: (1) on the "all-or-nothing" concept allocating full responsibility to each person whose negligence contributes to damage without respect to the proportion of his negligent conduct to that of others; (2) the proposition that a plaintiff totally "innocent" because he is not contributorily negligent is entitled to recovery from all "guilty" defendants; (Schwartz, Comparative Negligence, § 16.1); and (3) an assumed inability of the fact finding process to apportion negligent fault. (1 Harper & James, The Law of Torts, § 10.2; see also Anno., The Doctrine of Comparative Negligence and its Relation to the Doctrine of Contributory Negligence, 32 ALR 3d 463, 492, § 15.)

Effect of Li upon Traditional Bases of Joint and Several Liability

The impact of "pure" comparative negligence eliminates totally the all-or-nothing rule on the side of the tort coin which determines the plaintiff's right of recovery. The same reasoning which impelled our Supreme Court to take the step it did is equally applicable to the obverse side of the coin - that which determines the extent of the relative liability of persons who may be liable in negligence to the plaintiff.

That reasoning is synthesized in Li as "The basic objection to the doctrine [of contributory negligence] - grounded in the primal concept that in a system in which liability is based on fault, the extent of fault should govern the extent of liability - remains irresistible to reason and all intelligent notions of fairness." (13 Cal.3d at p. 811.) In a system where the liability of several defendants concurrently causing an injury is based upon fault, the conclusion is equally irresistible that the extent of the fault of each should govern the extent of liability of each.

Li now permits recovery in negligence to a plaintiff who is himself negligent. The rule of comparative negligence dispels any foundation for joint and several liability of concurrent tortfeasors based upon the plaintiff's total "innocence."

In its pure form as adopted in California, the rule eliminates any basis for joint and several liability founded on the proposition that the plaintiff is necessarily less at fault than others whose negligence contributed to his damage.

Li accepts the ability of the fact finding process to apportion degrees of negligence. In so doing, it eliminates the previously assumed inability to apportion fault among tortfeasors as the foundation of joint and several liability.

Policy consideration. Because the underpinning of Li eliminates the pre-Li basis of joint and several liability of concurrently negligent tortfeasors, we must determine whether sound policy requires continuation or rejection of the principle.

The law of other jurisdictions which have adopted one form or another of comparative negligence is of no help in the policy choice. Examination of the approach of other states shows no discernible pattern of the consequences of the elimination of the complete bar of contributory negligence upon the question of joint versus several liability of concurrent tortfeasors.

The lack of pattern is disclosed in the chart prepared from a cursory examination of the law of sister jurisdictions which appears in the appendix to this opinion. Georgia, Kansas, Nevada, New Hampshire, South Dakota, and Vermont have apparently opted for the principle of several liability. Joint liability has

been retained in Arkansas, Colorado, Florida, Hawaii, Idaho, Maine, Mississippi, New Jersey, New York, North Dakota, Pennsylvania, Utah, Wisconsin, and Wyoming. Oregon and Texas preserve the rule of joint liability where a defendant's negligence equals or exceeds that of the plaintiff, but apply the principle of several liability where the defendant's negligence is less than that of the plaintiff. Minnesota provides for joint liability if the plaintiff is free of negligence, but otherwise applies the rule of several liability. (Citations in appendix.)

The policy underpinning of the various rules in other states is not readily apparent. Ascertaining the rationale in other jurisdictions is complicated to the point of impossibility by their variants of comparative negligence.

Finding no guidance in the experience of other states, we approach the issue by reference to the underlying basis of the California law of negligence. That basis is essentially one of loss shifting (Fleming, Foreword: Comparative Negligence at Last - By Judicial Choice, 64 Cal.L.Rev. 239, 242) in a system founded upon socializing the loss incident to tortious conduct. (Kaiser Steel Corp. v. Westinghouse Elec. Corp. (1976) 55 Cal.App. 3d 737.)

Virtually all negligence law involves a decision on the extent of loss shifting from the plaintiff to someone else,

and generally from that someone to still others. Where, as in California, tort law is imbedded in the concept of socialization of loss, the "others" are taxpayers, consumers, or purchasers of insurance. To a significant degree, judicial adoption of rules of loss shifting represents a decision whether or not to call upon the finite social fund which represents the tax base upon which the legislative arms of government assert their charge. As judicially enunciated loss shifting calls upon the fund, its availability for use to improve education, to enhance equality of opportunity for the disadvantaged, to reduce street crime, to lessen the burden of local property taxation, and to serve any of the multitude of other growing fiscal needs of government is reduced.

The policy choice must thus be made in light of the social costs involved. The choice is complicated because, by reason of an ingrained system of contingent fees, claims administration costs, and expense incident to a complex procedure of litigation, somewhere between $2.00 and $3.00 of cost must be socialized to cover $1.00 of loss shifted from the individual. (See Keeton, O'Connell and McCord, Crisis in Car Insurance (1968) p. 90; State of New York Insurance Department, Automobile Insurance, pp. 34-36.)

Specifically, then, we must determine whether, in the

context of a system of pure comparative negligence, look at the ratio of two or three to one of loss should be shifted to society to cover a plaintiff's risk that one of several defendants whose concurrent negligence caused him damage is insolvent. In our view, it should not.

Plaintiffs have historically borne the risk of insolvency of the defendant where only one defendant negligently caused damage as well as the total loss where they themselves were negligent. Only in the situation where the plaintiff was not negligent, one of the defendants was insolvent, and another responsible in damages was the risk of the negligent insolvent defendant socialized by the rule of joint and several liability.

Adoption of the rule of pure comparative negligence has now shifted a portion of the loss formerly borne by the negligent plaintiff to the social fund. There is good reason not to burden the finite fund further with the risk of insolvency of one of several defendants.

By definition, the policy choice must be made where one of multiple concurrent tortfeasors is financially responsible and another is not. By reason of pure comparative negligence, the plaintiff will necessarily recover something in that situation where prior to Li he would recover nothing if he himself were negligent. It is a small trade-off from the plaintiff's standpoint

that he rather than the societal fund bear that portion of his misfortune attributable to insolvency of one of several tortfeasors where the fund rather than the plaintiff now bears a part of the cost of damage to which the plaintiff's negligence contributed.

Unquestionably, the rule of several liability is an imperfection in a system of socialization of loss from tortious conduct if one of the concurrent tortfeasors is unable to respond in damages. But the system is already grossly imperfect. Vicissitudes of a fact finding process not attuned to professional expert witnesses and measures of damage incapable of objective determination result in loss which should be shifted remaining with some plaintiffs while other plaintiffs profit by overcompensation at the expense of the societal fund.

Language of Li. The language of our Supreme Court in Li is consistent with the elimination of the principle of joint liability of concurrent negligent tortfeasors. The Li court says: "the extent of fault should govern the extent of liability" (13 Cal.3d at p. 811); "liability for damages will be borne by those whose negligence caused it in direct proportion to their respective fault" (13 Cal.3d at p. 813), and "the fundamental purpose of [the rule of pure comparative negligence] shall be to assign responsibility and liability for damage in direct proportion to the amount of negligence of each of the parties" (13 Cal.3d at

p. 829), while using the term "parties" synonymously with "persons." (Richards, Parties or Persons? Dispelling the Parties in Action Only Myth in Li v. Yellow Cab Company, 16 Cal. Courts Commentary, No. 2, March 1976.)

New rule. We thus conclude that the adoption of the rule of pure comparative negligence in Li abrogates the pre-existing rule of joint and several liability of concurrent tortfeasors. Where the Li rule applies, liability among concurrent tortfeasors must be apportioned according to their respective degrees of negligence with each liable to the plaintiff only for his proportion. (See Prosser, Comparative Negligence, 41 Cal.L.Rev. 1, 33.)

The rule which we here adopt accommodates the principle of comparative negligence to the California statutes governing contribution among tortfeasors in a manner which is simple in application and which preserves separation of powers.

Liability of concurrent tortfeasors in direct proportion to their relative degrees of fault is a highly desirable if not necessary element of any system of comparative negligence. (Fleming, The Supreme Court of California 1974-1975, Foreword: Comparative Negligence at Last - By Judicial Choice, 64 Cal. L.Rev. 239, 252-253 (hereafter Fleming).) Proportionate liability can be achieved in the face of California statutes providing for contribu-

tion in equal rather than proportionate shares among only those tortfeasors who have been named as defendants in an action at the plaintiff's option in one of three ways: (1) by adoption of the rule of several liability; (2) by judicially rewriting Code of Civil Procedure sections 875 and 876[2] which codify the rule

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[2] "§ 875. [Existence and incidents of right of contribution]
(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.
(b) Such right of contribution shall be administered in accordance with the principles of equity.
(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.
(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.
(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.
(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.
(g) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor."

"§ 876. [Pro rata share]
(a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.
(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them."

of contribution among tortfeasors who are jointly liable; or (3) by extending the California rules of indemnity so that they apply to concurrent negligent tortfeasors without reference to the existing distinction between primary and secondary liability. (Fleming, at pp. 253-256.)

Judicially rewriting Code of Civil Procedure sections 875 and 876 treads dangerous ground. Neither section is declaratory of the common law. The jurisprudential concept which allowed the Li court to modify the rule of contributory negligence codified in Civil Code section 1714 thus does not afford the same leeway of judicial decision in the case of sections 875 and 876. To extend the Li concept to statutes which, while not declaratory of the common law, are functionally related to others which are, is to open a great portion of the California substantive law statutes to judicial amendment. That intrusion upon the fundamental principle of separation of powers is one that should not be undertaken if it can be avoided.

Extension of the California concepts of indemnity to achieve proportionate liability of jointly liable tortfeasors also intrudes upon the power of the Legislature. Code of Civil Procedure sections 875 and 876 state that liability is to be borne equally and not proportionately. (Fleming, at p. 255.) The extension has the additional vice of inviting multiplicity

of litigation rather than disposing of the entire matter in one proceeding absent a requirement of compulsory joinder or cross-demand which is extremely difficult to formulate.

Several liability, however, satisfies the need simply and without invasion of separation of powers. (Fleming, at p. 256.) Joint liability of concurrent tortfeasors derives from the common law. The common law adaptation of principles to changed circumstances which is the basis of Li is equally applicable to abandonment of joint liability where Li applies. Several liability is simple in application in the Li setting. The jury special verdicts or court findings of fact which are necessary to the application of Li determine the apportionment of liability among concurrent tortfeasors so that the action is resolved in one place, at one time, as to all persons involved.

We recognize that our conclusion of the consequences of the rule of Li to the principle of joint and several liability of concurrent tortfeasors is at variance with language and possibly the rationale of decision of Court of Appeal opinions in Stambaugh v. Superior Court (1976) 62 Cal.App.3d 231, and Safeway Stores, Inc. v. Nest-Kart (1976) 63 Cal.App.3d 934. (See also E. B. Wills Co. v. Superior Court (1976) 56 Cal.App.3d 650.) Neither Stambaugh nor Safeway addresses the policy considerations of loss shifting or the logical extension of Li v. Yellow Cab

which we treat as controlling of our decision. Smith seems bottomed on a false analogy to statutory systems accompanying a rule of comparative negligence with fully compatible principles of contribution and indemnity. Stambaugh also rests on the by no means clear assumption that Code of Civil Procedure section 877, dealing with settling tortfeasors, is not limited by Li and its statutory history to tortfeasors who are jointly liable. Neither case considers the undesirable consequences of the rule of comparative negligence without a compatible method to achieve equality of treatment of defendants. Neither considers the jurisprudential consequences of attempting to reach that equality in the face of a statutory scheme which is inconsistent with the objective if the rule of joint and several liability is retained. Thus, while according deference to the post-Li Court of Appeal decisions, we cannot follow them.

Parties to the Action

The substantive rules which we have here articulated require procedural companions. Once the principle of allocation of liability among defendants based upon their respective degrees of negligence is accepted, there is a patent interest in having all persons whose fault contributed to the injury before the court in one action. One set of findings of fact or one set of special jury verdicts can then determine the entire matter as to all who

are involved. Multiple litigation can be avoided. A thicket of imponderable questions of the consequences of Li to the overly complicated California law of indemnity which preceded Li is penetrated if not skirted.

The policy reasons indicating the adoption of procedural rules which will permit the litigation to include as defendants all persons whose negligence contributed to the injury are particularly pertinent here. AMA, named as a defendant in the litigation seeks to bring into it as a party defendant the guardian ad litem of the minor who is the plaintiff. Accepting, as we must at this stage of the litigation, AMA's allegation that the guardian ad litem's negligence contributed to Glen's injury (see Gibson v. Gibson (1971) 3 Cal.3d 914, 921), it is hardly conceivable that the guardian ad litem would sue himself. It is not much more likely he would sue his wife, who is the other defendant to whom AMA's motion to file a cross-complaint is directed.

Disposition

Let a peremptory writ of mandate issue directing the superior court to vacate its order denying AMA's motion for leave to file a cross-complaint and to enter a new order granting the motion.

CERTIFIED FOR PUBLICATION.

THOMPSON, J.

We concur:

WOOD, P. J.

LILLIE, J.

Jurisdiction	Pure	Adulterated: 50/50 Aggregate	Adulterated: 50/50 Each Defendant	Adulterated: Other	Joint & Several	Several Only	Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportional to Fault	Uniform Contribution Among Tortfeasors Act Ad:	Defendant Permitted to Join/Seek Contribution ... to Pay Not Owed by Plaintiff	Notes
Alaska	1							No 2	2	2	
Arkansas		3			4			No 5	6	7	8
Colorado			9		10					11	12
Connecticut		13								14	
Florida	15				16			May-be 17/19	19	18	
Georgia				20		21					
Hawaii			22		23			May-be 24/25	25	26	
Idaho			27		28			Yes 29		30	
Kansas		31				32				33	
Maine		34			35			Yes 36		37	
Massachusetts		38						No 39	39	39	
Minnesota			40		41	42		Yes 43			44

Jurisdiction	Pure	Adult-erated			Joint & Several	Several Only	Joint Where Defendants's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Tortfeasors Act Adopted	Defendant Permitted to Join/Seek Contribution ... to Party Not Named by Plaintiff	Notes
		50/50 Aggregate	50/50 Each Defendant	Other							
Mississippi	45				46			No 47	47	47	
Montana			48								
Nebraska				49							
Nevada			50			51		No 52	52	52	
New Hampshire			53			54					
New Jersey			55		56			May-be 57/58	58	58	
New York	59				60			Yes 61		62	
North Dakota			63		64			May-be 65/66	66	66	
Oklahoma				67							
Oregon		68					69	Yes 70			
Pennsylvania		71			72			May-be 73/74	74	74	
Rhode Island	75							No 76	76	76	

Jurisdiction	Pure	Adulterated: 50/50 Aggregate	Adulterated: 50/50 Each Defendant	Adulterated: Other	Joint & Several	Several Only	Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Tortfeasors Act	Defendant Permitted to Join Seek Contribution to Pay Not Barred by Plaintiff's Fault
South Carolina			77							
South Dakota				78		79		No 80	80	80
Texas		81					82	Yes 83		84
Utah			85		86			Yes 87		88
Vermont		89				90				No 91
Washington	92									
Wisconsin			93		94			Yes 95		
Wyoming			96		97			Yes 98		99

The following states and specific Federal Acts apply comparative negligence rules to the limited fact situations indicated:

Arizona	100									
District of Columbia	101									
Iowa	102									

Jurisdiction	Pure	Adulterated			Joint & Several	Several Only	Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Tortfeasors Act Adopted	Defendant Permitted to Join Seek Contribution [illegible] to Pay Not Named by Plaintiff	Notes
		50/50 Aggregate	50/50 Each Defendant	Other							
Kentucky	103										
Michigan	104										
North Carolina	105										
Ohio	106										
Virgina	107										
F.E.L.A.	108										
Jones Act	109										
Death on the High Seas Act	110										

1. Kaatz v. State of Alaska (1975) 540 P.2d 1037

2. Alaska Stat. §§ 09.16.010 to 09.16.060

3. Ark. Stat. Ann. §§ 27-1763 to 27-1765, 27-1730.1 to 27-1730.2

4. Walton v. Tull (1962) 356 S.W.2d 20

5. Id., at p. 25

6. Ark. Stats. §§ 34-1001 to 34-1009

7. Lacewell v. Griffin (1949) 219 S.W.2d 227

8. Id.; contribution not limited to parties named by plaintiff; unclear as to whether defendant has right to join parties not named by plaintiff.

9. Colo. Rev. Stat. Ann. §§ 13-21-111, 41-2-14

10. Bass v. United States (1974) 379 F.Supp. 1208, 1209

11. Colo. Rules of Civil Procedure, Rule 22

12. Id.; no contribution, indemnity only.

13. Conn. Gen. Stat. § 52-572h(a)

14. Id., § 52-104

15. Hoffman v. Jones (1973) 280 So.2d 431

16. Stuart v. Hertz Corp. (1974) 302 So.2d 187

17. Lincenberg v. Issen (1975) 318 So.2d 386, 391

18. Stuart v. Hertz Corp., supra, 302 So.2d at p. 194, fn. 3

19. Fla. Stats. Ann. § 768.31

20. Ga. Code Ann. §§ 105-603, 94-703; Smith v. American Oil Co. 49 S.E.2d 90; Elk Cotton Mills v. Grant (1913) 79 S.E. 836

21. Higginbotham v. Ford Motor Co. (5th Cir. 1976) 540 F.2d 762 (no apportionment in strict liability cases)

22. Haw. Rev. Stat. § 663-31

23. Id., §§ 663-31, 663-12 663-17

24. Id., § 663-12

25. Id., §§ 663-11 to 663-17

26. Id., § 663-17(a)

27. Idaho Code Ann. § 6-801

28. Id., § 6-804

29. Id., § 6-803(3)

30. Id., § 6-803(4)

31. Kan. Stat. Ann. § 60-258a(a)

32. Id., § 60-258a(d)

33. Id., § 60-258a(c)

34. Me. Rev. Stat. Ann., Tit. 14, § 156

35. Id., § 156; see also Packard v. Whitten (1971) 274 A.2d 169, 180

36. Packard v. Whitten, supra, 274 A.2d 169

37. Packard v. Whitten, supra, 274 A.2d at p. 174

38. Mass. Gen. Laws Ann., Ch. 231, § 85; 54 Mass.L.Q. 140

39. Id., Ch. 231 B, §§ 1 to 4

40. Minn. Stat. Ann. § 604.01(1)

41. Id.

42. But see Kowalski v. Armour & Co. (1974) 220 N.W.2d 268

43. Minn. Stat. Ann. § 604.01(1)

44. Where plaintiff contributes by his own negligence to the injury, liability is several only; where there is no contributory negligence attributable to plaintiff, liability is joint and several.

45. Miss. Code Ann. § 11-7-15

46. Saucier v. [illegible] (1967) 203 So.2d 299

47. Miss. Code Ann. § 85-5-5

48. Mont. Stat. § 58-607.1

49. Neb. Rev. Stat. § 25-1151

50. Nev. Laws § 41.141(1)

51. Id., § 41.141(3)(a)

52. Id., §§ 17.215 to 17.325

53. N.H. Rev. Stat. Ann. § 507:7-a

54. Id.

55. N.J. Stat. Ann. § 2A:15-5.1

56. Id., § 2A:15-5.3

57. Id., §§ 2A:15-5.2, 2A:15-5.3

58. Id., §§ 2A:53A-1 to 2A:53A-5

59. N.Y. C.P.L.R. § 1411; see also Rossman v. LaGrega (1971) 270 N.E.2d 313

60. N.Y. C.P.L.R. §§ 1401-1402

61. Id., § 1401, 1402; Dole v. Dow Chemical Co. (1972) 282 N.E.2d 288

62. N.Y. C.P.L.R. §§ 1401-1403; Berliner v. Kacov (1974) 361 N.Y.S.2d 477

63. N.D. Cent. Code § 9-10-07

64. Id.

65. Id.

66. Id., §§ 32-38-01 to 32-38-04

67. Okla. Stat. Ann., Tit. 23, § 11

68. Ore. Rev. Stat. § 18.470

69. Id., § 18.485

70. Id.

71. Pa. Stat. Ann. § 2101

72. Id., § 2102

73. Id.

74. Id., §§ 2082-2089

75. R.I. Gen. Laws Ann. § 9.20.4

76. Id., §§ 10-6-1 to 10-6-11

77. S.C. Code § 46-802.1

78. S.D. Comp. Laws § 20-9-2

79. Burmeister v. Youngstrom (1965) 139 N.W.2d 226 (several unless plaintiff has right of recovery against other party)

80. S.D. Comp. Laws §§ 15-8-11 to 15-8-22

81. Tex. Vernon's Civ. Stat. Art. 2212a, § 1

82. Id., § 2(c); see also Goodyear Tire & Rubber Co. v. Edwards (1974) 512 S.W.2d 748

83. Tex. Vernon's Civ. Stat. Art. 2212a, § 2(b)

84. Id., § 2(g)

85. Utah Code Ann. § 78-27-37

86. Id., §§ 78-27-40(2), 78-27-41(1); see also 1973 Utah L.Rev. 406, 421

87. Id., § 78-27-40(2)

88. Id., § 78-27-40(3)

89. Vt. Stat. Ann., Tit. 12, § 1036

90. Id.

91. Howard v. Spafford (1974) 321 A.2d 74

92. Wash. Rev. Code, Ch. 4.22.010

93. Wis. Stat. § 895.045; but see Chille v. Howell, 149 N.W.2d 600, suggesting that plaintiff cannot recover if his negligence is greater than that of all defendants, rather than greater than that of any one defendant. See also Vincent v. Pabst Brewing Co. (1970) 177 N.W.2d 513 where, over a strong dissent, the majority refused to switch to pure comparative negligence but suggested that upon failure of the Legislature to so act within a reasonable period of time the court would judicially make the change.

94. Chille v. Howell, supra, 149 N.W.2d 600

95. Bielski v. Schulze (1962) 114 N.W.2d 105

96. Wyo. Stat. Ann. § 1-7.2(a)

97. Id., §§ 1-7.3(d), 1-7.4(a)

98. Id., § 1-7.3(c); cf. Pure Gas & Chemical Co. v. Cook (1974) 526 P.2d 986, 989, fn. 3

99. Id., § 1-7.3(d)

100. Ariz. Stat. Rev., §§ 23-801 to 23-808, limited to damages arising from manufacturing, mining, building, etc.

101. Dist. of Col. Code §§ 44-401 to 44-404, limited to damages arising from employment by common carrier only.

102. Iowa Code Ann. §§ 479-124, 479-125, limited to damages arising from employment by railway.

103. Ky. Rev. Stat. §§ 277.310 to 277.320, limited to damages arising from employment by railway.

104. Mich. Stat. Ann. §§ 17-461 to 17-464, limited to damages arising from employment by railway.

105. N.C. Gen. Stat. § 62-242, limited to damages arising from employment by railroad.

106. Ohio Rev. Stat. §§ 4973.07 to 4973.09, limited to damages arising from employment by railroad or other employment not covered by workers compensation.

107. Va. Code §§ 8-641, 8-64[illegible], limited to damages arising from employment by railroad and damage to traveler on public highway caused by railroad.

108. 45 U.S.C. §§ 51-60

109. 46 U.S.C. § 688

110. 46 U.S.C. § 766

A M E N D M E N T

Offered in the HOUSE By the Commerce Committee

TO: HOUSE BILL NO. 124

Page 1, line 6:

After "fault" add "; and amending Rule 49(c) of the Alaska Supreme Court's Rules of Civil Procedure"

Page 2, line 16:

Add a new section to read:

"Sec. 3. AS 09.17.020 of sec. 2 of this Act amends Rule 49(c) of the Alaska Supreme Court's Rules of Civil Procedure by requiring the trial court to instruct the jury to give answers to special interrogatories in a tort action involving contributory fault."

File HB 124

Supreme Court

State of Alaska

March 30, 1977

CHIEF JUSTICE
ROBERT BOOCHEVER

JUSTICES
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN
EDMOND W. BURKE

POUCH U
STATE COURT AND OFFICE BUILDING
JUNEAU, ALASKA
99811
907-465-3410

The Hon. Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Rep. Gardiner:

Receipt is acknowledged of your letter of March 17 in which you expressed displeasure over "a direction of the court toward invading the legislative area." You refer particularly to the case of Kaatz v. State, 540 P.2d 1037 (Alaska 1975). I am enclosing a copy of the opinion in that case because I find it difficult to understand how one could contend that that opinion constitutes any invasion of legislative powers. What we were dealing with in Kaatz was an ancient court-originated doctrine whereby one who was contributorily negligent in any manner was denied recovery. The doctrine is outmoded, and contemporary judicial thinking favors the comparative negligence doctrine whereby damages are apportioned according to relative fault. Since the contributory negligence doctrine is judicial in origin, it certainly was subject to judicial change, unless one takes the position that all decisions are embodied in concrete. I am sure that you do not countenance any such theory.

The court in Kaatz was merely exercising the traditional judicial function of delineating the common law. The United States Supreme Court in the case of Funk v. United States, 290 U.S. 371, 78 L. Ed. 369 (1933), discusses the function of the courts, both federal and state, "to decline to enforce the ancient rule of the common law under conditions as they now exist." The Court stated:

> To concede this capacity for growth and change in the common law by drawing "its inspiration from every foundation of justice," and at the same time to say that the courts of this country are forever bound to perpetuate such of its rules as, by every reasonable test, are found to be neither wise nor just, because we have once adopted them as suited to our situation and institutions at a particular time, is to deny to the common law in the place of its adoption a "flexibility and capacity for growth and adaptation" which was "the peculiar boast and excellence" of the system in the place of its origin.

The court cites with approval opinions of various state supreme courts including that of the Indiana Supreme Court in Ketelsen v. Stilz, 184 Ind. 702, 111 N.E. 423 (1918), as follows:

> "Since the courts have had an existence in America," that court said (p. 708), "they have never hesitated to take upon themselves the responsibility of saying what are the proper rules of the common law."

I know that it has become popular to decry legal opinions as "judicial legislation." I have no quarrel with restricting a court's function where valid statutes are enacted. When provisions of such statutes are questioned before the court, its function is limited to determining constitutionality. Where different meanings are attributed to the statute, the court's role is only to ascertain the legislature's intent. Even in this latter function, however, it may be said that the court is legislating. Whether it gives a literal or a broad interpretation of a questioned statutory provision, in the last analysis, the court is defining the law.

In any event, however, I fail to see how the court can be accused of invading the legislative area when performing its traditional task of construing the common law as was done in Kaatz. The legislature, of course, is free to pass statutes on this subject, but to date it has not seen fit to do so.

With reference to your further comment pertaining to the possible need of an amendment to Alaska's Uniform Contribution among Tortfeasors Act (AS 09.10.010), I think that it would be improper for the court to propose a form of legislation. I am enclosing, however, a portion of a law review article appearing in Vol. 64 of the California Law Review discussing the problems involved in the application of contribution among tortfeasors under comparative negligence. I hope that this article will be of some assistance. In addition, I will send you in the near future a proposed Uniform Comparative Negligence Act which also covers the subject of contribution among tortfeasors. I am certain that the Legislative Affairs Agency can furnish further assistance as to various legislative alternatives.

We realized that when we adopted the doctrine of comparative negligence that additional problems would arise in the future. This is the nature of the legal process which resolves disputes as they arise. The legislature, of course, may at any time endeavor to study the broad ramifications of problems and enact laws across a much broader spectrum. I agree with the portion of your letter which says that the courts in our society should interpret laws. I do not agree, however, that the court's function is to enforce laws. That is an executive function. I hope that this answers your inquiries and helps to clarify my views as to some of the functions of the courts in our tripartite system of government.

Sincerely yours,

Bob Boochever

Robert Boochever
Chief Justice

cc: Senator John Rader
Rep. Hugh Malone
Ed Stahla, Pres., Alaska Bar

P.S. I am enclosing a copy of the Uniform Comparative Fault Act. Note this draft has not been discussed as yet by the National Conference. I call your attention to Pages 10 and 11 of the draft which contains proposed amendatory language to the Uniform Contribution Among Tortfeasors Act.

UNIFORM COMPARATIVE FAULT ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS EIGHTY-FIFTH YEAR
ATLANTA, GEORGIA

JULY 31 - AUGUST 6, 1976

UNIFORM COMPARATIVE FAULT ACT

With Comments

The ideas and conclusions herein set forth, including drafts of proposed legislation, have not been passed upon by the Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Committee, Reporters or Commissioners. Proposed statutory language may not be used to ascertain legislative meaning of any promulgated final law.

SPECIAL COMMITTEE ON UNIFORM COMPARATIVE FAULT ACT

John W. Wade, Vanderbilt University, School of Law, Nashville, TN 37203, Chairman

Francis Bergan, 5 Circle Lane, Albany, NY 12203

Windsor Dean Calkins, 1163 Olive Street, Eugene, O. 97401

Floyd R. Gibson, 837 U. S. Courthouse, Kansas City, MO 64106

Elmer R. Oettinger, Institute of Government, University of North Carolina, Chapel Hill, NC 27514

James H. Clarke, 800 Pacific Building, Portland, OR 97204, Chairman, Division F, Ex Officio

James M. Bush, 363 North First Avenue, Phoenix, AZ 85003, President, Ex Officio

REVIEW COMMITTEE ON UNIFORM COMPARATIVE FAULT ACT

Lindsey Cowen, Case Western Reserve University, Law School, Cleveland, OH 44106, Chairman

John A. Chanin, 700 Bishop Street, Honolulu, HI 96813

John F. Hayes, P. O. Box 705, Hutchinson, KS 67501

Richard L. Jones, 3153 Warrington Road, Birmingham, AL 35223

John R. Parker, P. O. Box 27, Clinton, NC 28328

PREFATORY NOTE

The first question is whether a system of comparative negligence is superior to the common law system of contributory negligence. Comparative negligence is much fairer than contributory negligence and more consistent with the fault concept. The common law all-or-nothing approach which either let the plaintiff recover his full damages or did not give him anything is now outdated and inconsistent with contemporary ideals. Either way it went, it was unfair to one party or the other. This unfairness was not cured by the several exceptions such as last clear chance. Although they may have evened out on the average, that average did nothing for the particular parties in a particular case. One of the parties is always treated unfairly. Relying on the lay jury to accomplish some form of apportionment of damages, without proper instructions, and acting as outlaws in disregarding the law given to them by the judge, is simply not a defensible practice.

The current trend is decidedly to comparative negligence, with a substantial majority of the states adopting it in one form or another, mostly in recent years. Almost every common-law jurisdiction outside the United States has adopted comparative negligence. The language of the statutes varies considerably, and the form adopted often comes about as a result of a political compromise without careful consideration of its practical implications. A strong case exists for the NCCUSL to undertake the necessary careful study required to prepare a Comparative Negligence Act, whether it is called a uniform act or a model act. This committee is acting on the basis of that case.

A preliminary question which should be considered before commenting on the individual provisions of the proposed act is what form of comparative negligence should be adopted.

There presently exist in this country four forms of comparative negligence: (1) plaintiff's negligence slight, and defendant's negligence gross, (2) plaintiff's negligence "not

as great as" defendant's negligence, (3) plaintiff's negligence "not greater than" defendant's negligence, and (4) the "pure type," apportionment allowed even though plaintiff's negligence exceeds that of defendant.

The slight-gross form can be dismissed as having no current support. The second and third are "modified" forms, differing from each other only in the situation where both parties are found to be 50% negligent. Number 2 would not allow recovery then; number 3 would allow recovery and seems the better of the two.

The real issue is between the modified forms and the pure form (number 4). The two modified forms may possibly work satisfactorily in the case in which only one party is hurt and he sues the other, and might perhaps be the choice if these were the only cases to arise. But when there are multiple plaintiffs and cross-claims, the modified form becomes entirely inadequate. To compare the two forms, take variations of a case in which A and B were both negligent and both injured. Assume A's negligence is found to be 25% and B's is found to be 75%.

Case (1). Assume each party suffers $8,000 damages. Under the modified form, A recovers $6,000; B recovers nothing. A's loss is $2,000 (all his own), or 12.5% of the total of $16,000. B's loss is $14,000 ($6,000 to A, and $8,000 of his own) for 87.5% of the total. Under the pure form (assuming no set-off), A recovers $6,000; B, $2,000. A's loss is $4,000 ($2,000 to B and $2,000 of his own) for 25% of the total; B's loss is $12,000 ($6,000 to A and $6,000 of his own) for 75% of the total.

Case (2). Assume A suffers $4,000 damages; B, $12,000. Under the modified form, A recovers $3,000; B, nothing. A incurs $1,000 (all his own) for 6% of the total; B incurs $15,000 ($3,000 to A and $12,000 of his own) for 94% of the total. Under the pure form, A recovers $3,000; B, $3,000. A incurs $4,000 loss ($3,000 to B and $1,000 of his own) for 25% of the total; B incurs $12,000 ($3,000 to A and $12,000 of his own) for 75% of the total.

Case (3). Assume A suffers $12,000 damages; B, $4,000. Under the modified form, A recovers $9,000; B, nothing. A incurs $3,000 loss (all his own) for 19% of the total; B incurs $13,000 loss ($9,000 to A, $4,000 of his own) for 81% of the total. Under the pure form, A recovers $9,000; B, $1,000. A

incurs $4,000 loss ($1,000 to B and $3,000 of his own) for 25% of the total; B incurs $12,000 loss ($9,000 to A and $3,000 of his own) for 75%.

Case (4). Now change the fault percentage. Assume that each party suffered $8,000 damages and that A was 49% negligent; B, 51%. Under the modified form, A recovers $4,080; B, nothing. A incurs $3,920 loss (all his own) for 24.5% of the total; B incurs $12,080 loss ($4,080 to B and $8,000 of his own) for 74.5% of the total. Under the pure form, A incurs $7,840 loss ($3,920 to B and $3,920 of his own) for 49% of the total; B incurs $8,160 loss ($4,080 to A, and $4,080 of his own) for 51% of the total.

Thus, it is apparent that the pure form always divides the total loss according to the established fault percentage, while the modified form fluctuates wildly and very unfairly.

While the pure form of comparative negligence is not presently the majority form, it has grown very substantially in the 1970's and is now sustained by an impressive list of authorities. First enacted in the Federal Employers Liability Act in 1908, it was later adopted in other Federal Acts. Mississippi adopted the pure form in 1910. It has also been adopted by legislation in New York (1975), Rhode Island (1971) and Washington (1973). In three states it has been judicially adopted by the supreme court. Kaatz v. State, 540 P.2d 1037 (Alas. 1975); Li v. Yellow Cab Co., 13 Cal. 3d 804, 119 Cal. Rptr. 858, 532 P.2d 1226; Hoffman v. Jones, 280 So.2d 431 (Fla. 1973). It has also just been adopted by the U. S. Supreme Court for admiralty cases. United States v. Reliable Transfer Co., 421 U.S. 397 (1975). The pure form is also adopted in Great Britain, most of the states and provinces in Australia and Canada, and other common law jurisdictions.

UNIFORM COMPARATIVE FAULT ACT

Section 1. In a tort action for damages based on negligence, recklessness, or strict liability (including breach of warranty), plaintiff's contributory fault does not bar recovery but has the effect of diminishing his damages proportionately according to his own fault or the fault attributable to him. This section applies to a tort action based upon a statute, unless otherwise expressed or construed. In a derivative action or an action for wrongful death, plaintiff's damages are diminished according to the fault of any person whose conduct might otherwise have barred the liability. This section applies whether or not the contributory fault previously constituted a defense and replaces such common law principles as last clear chance and implied assumption of risk.

COMMENT

Torts covered by the Act. The proposed act applies to tort actions for negligence, recklessness and strict liability. As to recklessness, the common-law rule that contributory negligence did not bar recovery or diminish damages was an overcure. A comparison of the relative fault of the parties is appropriate here.

There is more question about applying the act to strict liability, since the theory is that the defendant is liable regardless of fault. But for strict liability for both abnormally dangerous activities and for products there is strong similarity to negligence declared by the court as a matter of

law (negligence per se); and it is not anticipated that the trier of fact will have serious difficulty in setting percentages of fault. In addition, it would be highly anomalous in a products' liability case to have the damages mitigated if the plaintiff elects to sue in negligence, but to allow him to recover full damages if he elects instead to sue for strict liability in tort. The two actions should be treated alike, especially when they are separate counts in the same complaint. There would also be anomaly in diminishing the amount of the plaintiff's recovery for contributory negligence if the defendant is found to be negligent but in allowing the plaintiff to recover his full damages in the absence of a finding of defendant's negligence.

There is a problem about how to handle an action for breach of implied warranty. The Act is not intended to include actions which are fully contractual in their gravamen and in which the plaintiff is suing solely because he did not obtain what he contracted to receive. But many actions for breach of warranty sound primarily, or partially, in tort -- especially when the damage involves physical harm to person or property. These actions should be included. The essential nature of the breach-of-warranty action varies greatly in different states, and the language may have to vary for some states. The words "strict liability (including breach of warranty)" are intended to indicate that the act includes an action for breach of warranty which comes within the common concept of an action of strict tort liability for products.

By conscious decision, the Act does not apply to intentional torts. It seems inappropriate in that situation, and no state has attempted to extend the concept of comparative fault to intentional torts.

For certain types of torts, such as nuisance, the defendant's tortious conduct may be intentional, negligent or subject to strict liability. In the latter two instances the Act would apply, but not in the case of intentionally inflicting the injury on the plaintiff. A similar analysis applies to actions for misrepresentation.

"Contributory fault" is treated as a term of art referring to fault on the part of the plaintiff (or one under whom he claims), and which has a causal relationship to his injury.

"Fault attributable to the plaintiff" is to take care of imputed negligence, as in the case of respondeat superior.

Comparison of fault of parties. In comparing plaintiff's fault with that of the defendants, there are a number of im-

plications arising from the concept of fault. The conduct of plaintiff, or of any defendant, may be more or less at fault, depending on whether it was mere inadvertence or acting with an awareness of the danger involved, on the magnitude of the risk created by the conduct, on the significance of what he was seeking to attain by his conduct, and on his superior or inferior capacities. The rule of law that a particular defendant owes a higher degree of care (as in the case of a common carrier of passengers) or a lesser degree of care (as in the case of an automobile host in a state having a valid automobile-guest statute) is important in determining whether he is liable at all: but if his liability has been established, the rule does not play a part in determining the relative proportion of fault of this party in comparison with the others.

On the other hand, in determining the relative fault of the parties, the trier of fact may give consideration to the relative closeness of causal relationship, so that the concept of comparative fault absorbs the causation elements of the common law doctrine of last clear chance. This holding in such cases as Cushman v. Perkins, 245 A.2d 846 (Me. 1968); and Lovesee v. Allied Dev. Corp., 45 Wis.2d 340, 170 N.W.2d 196 (1970) seems properly applicable to this Act.

"Action based on a statute" includes wrongful death and survival acts, dram-shop acts, dog-bite statutes, actions of negligence per se based on criminal statutes, etc. An attempt to enumerate them in the statute would almost inevitably leave some out. "Unless otherwise expressed or construed" is to keep from repealing by implication and to give a court the authority to construe a statute such as a child-labor act to prevent any mitigation if it thinks the policy of the act requires protection of a class of persons even against their own weaknesses or inadequacies.

"Whether previously constituting a defense or not" includes last clear chance, assumption of risk (to the extent that it is based on fault), contributory fault for recklessness or strict liability, etc., plus all cases where contributory negligence was a complete defense. Consent to defendant's conduct is not regarded as a form of contributory fault.

Section 2. In a tort action involving contributory fault, the court, unless otherwise requested by the parties, shall instruct the jury to give answers to special interrogatories [to render special verdicts], or make findings itself if there is no jury, indicating:

(1) the amount of damages each claimant would recover if contributory fault were disregarded, and

(2) the percentage of the fault for each party to the action as compared with the combined fault of all parties to the action. For this purpose, the court may determine that 2 or more persons are appropriately treated as a single party.

COMMENT

These questions are expected to reach percentages whose total for the relevant parties (plaintiffs or defendants) will add up to 100%.

"Parties to the action" includes third-party defendants, whether made defendants by the original plaintiff or not.

The limitation to "parties to the action" means ignoring other persons who may have been at fault with regard to the particular injury but who have not been joined as parties. This is a deliberate decision. There is no way of telling whether that person was actually at fault or what amount of fault should be attributed to him, or whether he will ever be sued, or whether the statute of limitations will run on him, etc. An attempt to settle these matters in a suit to which he was not a party would not be binding on him as res judicata. If a separate suit is necessary to settle these issues in any event, there seems to be no point in speculating on the matter in the first suit. The second suit would probably be brought by a defendant in the first suit who is seeking contribution; other defendants in the first suit should be willing to join with him, and the plaintiff might also be joined as a party. Nothing is said about this in the Act because the common law is adequate to cover it.

The court should have, without providing for it in this section, the usual powers of setting aside or modifying a verdict if it is internally inconsistent or shows bias or prejudice, etc. On the same basis as the remittitur principle, a court might indicate its intent to set aside a percentage allocation unless the parties agreed to a somewhat different one.

SECTION 3. Contribution rights among multiple defendants are determined in accordance with the percentage of fault of each defendant, as found by the trier of fact. The court shall enter judgment on the basis of those rights and findings made under Section 2. If a judgment against a party cannot be collected within [one year] after the judgment becomes final, the responsibility for the amount involved is distributed among the other parties in proportion to their relative fault.

COMMENT

A state which does not already have a practice of granting contribution between joint tortfeasors may wish to start the section with language like this: "The right of contribution exists as among multiple defendants, and apportionment is determined . . . . "

Joint and severable liability under the common law means that every defendant contributing to a plaintiff's injury is liable to him for the whole amount of the recoverable damages. This is not changed by the Act. Between the defendants themselves, however, the apportionment is in accordance with the percentages established under § 2.

Special problems exist when defendants are not liable for exactly the same injuries, as when an automobile accident victim has his injury exacerbated by negligence of the doctor treating him; but these are better handled by the trial judge in the light of the facts before him than by providing for them in the statute in advance and in the abstract.

If an award against one party is uncollectible, the plaintiff could collect at common law against any of the other defendants, who are jointly and severally liable. The last sentence in the section provides that the apportionment for the uncollectible amount will be made among all of the other parties (including the claimant) according to their relative percentages of fault, as established in the suit.

SECTION 4. A release or a covenant not to sue or enforce judgment, given by a tort claimant to a tortfeasor, does not discharge other tortfeasors liable for the same harm unless it so provides; but it reduces the claim against the others to the extent of the consideration paid for it or the amount stipulated in it, if greater. If the release or covenant is given in good faith, it discharges the person to whom it is given from liability for contribution.

COMMENT

The question of the contribution rights of Tortfeasors A and B against Tortfeasor C who settled and obtained a release admits of three answers: (1) A and B are still able to obtain contribution against C despite the release, (2) the plaintiff's total claim is reduced for the proportionate share of C, and (3) B and C are not entitled to contribution unless the release was given not in good faith but by way of collusion. Experience has shown that the first two solutions both strongly discourage settlements, though for different reasons. A careful study of the matter was made when the Uniform Contribution Among Tortfeasors Act (1955) was drafted and the third solution was adopted in § 4. This section follows that decision, though the wording is slightly different.

Alternative 1

SECTION 5. Damages awarded under this Act may be set off only to the extent that an award against one party cannot be collected.

Alternative 2

SECTION 5. To the extent that liability insurance is available to pay a judgment entered under this Act, damages awarded under this Act may not be set off.

COMMENT

If plaintiff and defendant are both found to be 50% negligent and they suffered the same amount of damages, neither party would recover anything if set-off is applied, even though they both carried liability insurance and paid for coverage. The loss is taken from the insurance companies who were paid to carry it and placed upon the parties, who paid to have it carried. Factual variations do not change the essence of the result. Set-off would thus destroy the effectiveness of the Act.

Two alternative provisions are offered. The second may raise some constitutional questions of equal protection.

SECTION 6. This Act applies to all injuries incurred after it takes effect.

SECTION 7. If any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Amendment of Uniform Contribution Among Tortfeasors Act (1955)

Amend Section 2 of the Uniform Contribution Among Tortfeasors Act to read as follows:

"SECTION 2. [Pro Rata Shares.] In determining the pro rata shares of tortfeasors in the entire liability (a) ~~their~~

~~relative degrees of fault shall not be considered~~ their relative degrees of fault shall be the basis for allocation; (b) if equity requires, the collective liability of some as a group shall constitute a single share; and (c) principles of equity applicable to contribution generally shall apply.

COMMENT

This is needed. The Uniform Contribution Among Tortfeasors Act had assumed no comparative negligence, so that it was concerned solely with dividing the responsibility between the defendants. It had divided into halves, thirds, fourths, etc. -- a rough sort of justice, as in the former American admiralty rule for comparative negligence. If the plaintiff's diminution is determined on a percentage basis, the allocation among the defendants should be on a percentage basis, too. A mixture of the two systems will produce confusion and inequity. Some states by statute or judicial decision presently provide for contribution on the basis of fault.

from the personal attitudes and prejudices of individual jurors. But that is also true of other issues traditionally allocated to the jury in negligence litigation. Moreover, "the utilization of special verdicts or jury interrogatories can be of invaluable assistance in assuring that the jury has approached its sensitive and often complex task with proper standards and appropriate reverence."[49]

b. Administrative Problems: Multiple Parties

Among unresolved matters left to the future, the *Li* court identified two administrative problems which have been given much play by opponents of comparative negligence.[50] Both concern multiple parties, to which passing reference has already been made. Indeed, Prosser viewed the prospect of entrusting multiple-party problems to the Ameri-

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49. 13 Cal. 3d at 824, 532 P.2d at 1240, 119 Cal. Rptr. at 872. Statutes in four states (Colo., Hawaii, Mass. and N.J.) require the use of special verdicts; in six more states (Idaho, Minn., Nev., N.D., Utah, Wyo.) special verdicts are required at the request of either party. For citations, see notes 1 and 4 *supra*. Nearly all states, including California, permit special verdicts at the discretion of the trial judge. The *Li* court was content "for the present" to leave the matter in that posture. *Id.* at 824 n.18, 532 P.2d at n.18, 119 Cal. Rptr. at n.18. Calif. S.B. 494, 1975-76 Reg. Sess. (Senator Grunsky) would mandate special verdicts. On the other hand, the New Hampshire and Vermont statutes specifically call for general verdicts, and those in Mississippi, Rhode Island and Maine appear to exclude special verdicts. Also consider SCHWARTZ, *supra* note 1, ch. 17; Aiken, *Proportioning Comparative Negligence—Problems of Theory and Special Verdict Formulations*, 53 MARQ. L. REV. 293 (1970). The link between special verdicts and blindfolding the jury has been already noted. See note 26, *supra*. Special verdicts, in addition to controlling jury bias, also help to reveal jury confusion or poor arithmetic. For example, in Black v. McCabe, [1964] North Ire. L.R. 1, the jury assessed the plaintiff's damages at £1,450 (which they reduced to £1000) and the defendant's damages at £120 (which they reduced to £90). This placed the plaintiff's responsibility at about 75 percent and the defendant's at 69 percent. Only in special circumstances may the aggregate of faults exceed 100 percent—as, for example, where some of the plaintiff's fault did not cause injury to the defendant but only to himself. *E.g.*, Hanly v. Berlin, [1975] Qd. R. 52 (where two cars sideswiped each other due to the fault of both drivers and one of them sustained injury to his elbow, which had been negligently protruding over the open window sill—the accident fault was divided 40:60, but the plaintiff suffered an additional 10 percent reduction for his elbow injury). In Wisconsin this is misleadingly known as the distinction between "active and passive" negligence. Vroman v. Kempke, 34 Wis. 2d 680, 150 N.W.2d 423 (1967). The English statute, Law Reform (Contributory Negligence) Act, 8 & 9 Geo. 6, c. 28, § 1 (1945), which refers to "shares of responsibility" has also been thought to require deference to causation, at least in addition to (if not in lieu of) fault. Stapley v. Gipsum Mines, [1953] A.C. 663, 682, trenchantly criticized by Williams, *The Two Negligent Servants*, 17 MOD. L. REV. 66 (1954). But as one commentator exclaimed, speaking of the same problem in relation to "comparative contribution," "[C]ausation itself is difficult enough; degrees of causation would really be a nightmare." Chapman, *Apportionment of Liability between Tortfeasors*, 64 LAW Q. REV. 26, 28 (1948). An illustration of its possible relevance would be the case of a child, just capable of negligence, dashing into the path of an automobile. To its negligible fault should perhaps be added a factor for its equal share in causing the accident, in arriving at its "share of responsibility" for the damage.

50. 13 Cal. 3d at 823-24, 532 P.2d at 1239-40, 119 Cal. Rptr. at 871-72.

can jury with such apprehension as to cast a blight on the very feasibility of introducing comparative negligence into the general accident law. As he saw it, the fact that these problems have not proved daunting to British and Canadian law offers no real encouragement because the civil jury has been virtually displaced in those countries by professional and capable judges.[51]

1. Contribution. The central problem concerns the relationship between comparative negligence and contribution. Suppose A, B and C are involved in a collision, injuring A. A recovers a judgment against B and C in which responsibility for his damages of $5000 are allocated in the proportion of 30 percent to A, 50 percent to B and 20 percent to C. Two questions arise: (1) how much can A recover from C—20 percent or 70 percent of $5000; and (2) if C has to pay 70 percent, can he claim contribution from B, and if so, for how much—35 percent or 50 percent of $5,000?

With regard to the first question, it must be noted that the accepted common law principle has hitherto been that concurrent tortfeasors liable for the same damage are liable *in solidum* ("entire liability"), each being liable for the total amount regardless of the shared responsibility of his co-tortfeasors.[52] This result is only fair, since there would be no justification for exposing an *innocent* plaintiff to the risk of being unable to collect a portion from one of the co-defendants: in other words, if one of the co-defendants is insolvent that risk should be borne by his co-tortfeasor rather than by the plaintiff. But if the plaintiff is himself at fault, his "equity" is no greater than that of the co-defendants, and it would be a perfectly defensible solution to make him share that risk. This seems particularly desirable when, as in the suggested example, the solvent defendent, C, was only 20 percent at fault, compared with the 50 percent liability of his co-defendant B and the 30 percent fault of plaintiff A.[53] The risk of B's insolvency may be distributed in two ways: one limits A's claim against B and C to their respective shares of responsibility, the other distributes B's share between A and C in proportion to their own shares. Under the first method, A could only

51. PROSSER, THE LAW OF TORTS § 67, at 438 (4th ed. 1971).

52. *Id.* at 292-98. "Entire liability" is sometimes misnamed "joint and several liability." The latter means that joint defendants may be sued jointly or separately, i.e., severally.

53. In "50 percent" jurisdictions, this contingency argues for measuring *A*'s negligence against *B* and *C* separately so as to free *C* from all liability. See note 27 *supra*. *See* the dissent in Walton v. Tull, 234 Ark. 882, 356 S.W.2d 20 (1962). In that case the majority consoled itself with the thought that "we cannot adopt a narrow construction of our comparative negligence statute in the vain hope of avoiding inequitable situations due to insolvency. Obviously either the plaintiff or the solvent defendant must suffer, and the loss has traditionally fallen upon the wrongdoer." *Id.* at 894, 356 S.W.2d at 26.

recover from C 20 percent of his damages, under the second method he could recover only 40 percent. The first method appears to be mandated by the New Hampshire, Vermont, and Kansas statutes;[54] the second was deliberately chosen in the sophisticated Irish statute drafted by Professor Glanville Williams.[55]

With regard to the second question, suppose that A has recovered 70 percent from C, and B is solvent, can C recover contribution from B and, if so, for how much? Here again, a great deal of diversity prevails. About half the states still retain the common law rule against contribution; among the remainder some allow contribution in accordance with the relative degrees of fault of the tortfeasors,[56] but the majority have adopted the rule of the 1955 Uniform Contribution Act, prescribing

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54. *See* SCHWARTZ, *supra* note 1, at 264. The Vermont statute reads: "Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed." VT. STAT. ANN. tit. 12, § 1036 (1973). The New Hampshire statute is virtually identical. N.H. REV. STAT. ANN. ch. 507, § 7-9 (Supp. 1973).

On the other hand some statutes—for example, those in New Jersey, N.J.S.A. tit. 2A:15-5.3 (Supp. 1975), and North Dakota, N.D. CENT. CODE tit. 32-38-01 (1960)—have specifically preserved the "entire" liability rule.

55. Civil Liability Act 1961, 1961 Acts of the Oireachtas c. 41, § 38, at 1403. The idea was first suggested by C. GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTION 77-79 (1936), the first systematic (American) study of contribution among tortfeasors and comparative negligence. It corresponds substantially to the rule applicable where one of more than two defendants is insolvent: thus, if *A*, without fault, is injured by *B*, *C*, and *D*, and *D* is insolvent, the shares of *B* and *C* are ratably increased to absorb D's portion. RESTATEMENT OF RESTITUTION § 85, comment *h* at 384; 64 A.L.R. 224; WILLIAMS, *supra* note 37, § 48. This is probably also the California rule. (Tucker v. Nicholson, 12 Cal. 2d 427, 433-34, 84 P.2d 1045, 1049 (1938).) It is expressly incorporated in section 3(c) of the model statute, proposed by Braun, *Contribution: A Fresh Look*, 50 CALIF. ST. B.J. 166 (1975) [hereinafter cited as Braun].

Analogous distribution also appears to be the better rule in 50 percent jurisdictions in order to spread the share of a defendant who is excused. Suppose P is 20 percent at fault, D_1 40 percent, D_2 30 percent, and D_3 10 percent. P cannot recover from D_3, whose share is spread proportionately among P, D_1, and D_2. Hence, P's share becomes 20/90, D_1's 40/90, and D_2's 30/90. Comment, *Comparative Negligence and Comparative Contribution in Maine: The Need for Guidelines*, 24 ME. L. REV. 243, 246-48 (1972).

56. The 1939 version of the Uniform Contribution Act, in HANDBOOK OF THE NAT'L CONF. OF COMM. ON UNIFORM STATE LAWS 244 (1939), provided, as an alternative to pro rata shares, unequal division "when there is such a disproportion of fault among joint tortfeasors as to render inequitable an equal distribution . . . ." Arkansas, Delaware, Hawaii, South Dakota and Utah adopted that alternative. ARK. STAT. ANN. § 34-1002 (1962); DEL. CODE ANN. tit. 10, § 6302 (1974); HAWAII REV. STAT. § 663-12 (Supp. 1974); S.D. COMP. LAWS ANN. § 15-8-15 (1967); UTAH CODE ANN. § 78-27-34 (1975). Idaho, Minnesota, New Jersey, North Dakota and Texas adopted "pure" comparative contribution at the same time and in the same statutes as comparative negligence. The latter is also the British rule and is followed in most of the rest of the world.

equal division.[57] That rule is, of course, based on a theory of causation, in contrast to comparative negligence, which is based on fault. This incompatibility results in an indefensible allocation of shares, especially where more than one participant in the accident suffers damages and cross-claims are made.

If (to revert to the previous illustration) A, 30 percent at fault, had recovered 70 percent from C, contribution in equal shares would allow C to recover from B only 35 percent rather than 50 percent, B's share of the total fault for the accident. Just, as in this example, C would in the end shoulder an excessive share, B would escape with less than his proper share if A had executed judgment against him (in which event he could have recovered 35 percent from C, 15 percent more than his due).

The position in California in these respects is obscure but not beyond redemption by bold and imaginative judicial statecraft. The stumbling block is the state Contribution Act,[58] reluctantly enacted in 1958, which permits contribution only between tortfeasors liable under a joint judgment and prescribes the rule of equal division. The Act still leaves it entirely to the whim of a plaintiff how the burden as between several tortfeasors is to be borne, since he may choose to sue only one of them to judgment and that one cannot even (as in Michigan[59]) implead the other(s) for contribution.[60] How can this statutory scheme be brought into harmony with the new rule of comparative negligence?

The most obvious and best method would, of course, be to legislate "comparative contribution," contribution in proportion to the parties' negligence.[61] Failing that, there is, fortunately, ample precedent even for a judicial initiative on a broad front. In minor key is the Wisconsin story, which underscores the tie between comparative negligence and contribution. Wisconsin had judicially developed a rule of contribution in equal shares before adopting a comparative negligence statute in 1931. In *Bielski v. Schulze*,[62] however, the Wisconsin Supreme Court

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57. Section 2(a) specifically directs that the parties' "relative degrees of fault shall not be considered." 12 UNIF. LAWS ANN. 63 (1975).

58. CAL. CODE CIV. PRO. §§ 875-80 (West 1975).

59. This was expressly authorized by MICH. COMP. LAW ANN. § 600.2925 (1974) [the Michigan Contribution Act]. Since 1974 the requirement of a joint judgment has been dropped. *Id.*

60. Fox v. Western New York Motor Lines, 257 N.Y. 305, 178 N.E. 289 (1931) (construing a statute identical to California's). Comment, *Joint Tortfeasors: Legislative Changes in the Rules Regarding Releases and Contribution*, 9 HAST. L.J. 180, 188-89 (1958). The effect of the joint judgment rule on C's share of liability is considered at note 74 *infra*.

61. See note 56 *supra*.

62. 16 Wis. 2d 1, 114 N.W.2d 105 (1962). Maine followed the same course in Packard v. Whitten, 274 A.2d 169 (Me. 1971); and so did the Third Circuit for the

reversed its earlier position and substituted a rule of contribution in accordance with the tortfeasors' shares of fault ("comparative contribution"), partly in recognition of its greater fairness, but partly also in deference to the comparative negligence rule. Admittedly, the court could have pretended a deference to the legislative preference—and it was in any event merely reversing a prior judicially created doctrine[63]—but it felt and responded to the need for harmonization of the two regimes.

A much bolder assault was mounted by the New York Court of Appeals in *Dole v. Dow Chemical Co.*[64] Here the plaintiff's husband, employed by Urban, was overcome by poisonous fumes while fumigating a storage bin with a chemical supplied by the defendant. The plaintiff's wrongful death action against the defendant's alleged negligence in not properly labeling the fumigant so as to warn users; the defendants cross-complained against Urban, seeking an indemnity (if held liable) for its negligence in failing to follow instructions on the label and thus contributing to its employee's death. The difficulty facing Dow in its third-party complaint was that the New York contribution statute, like the Californian, authorizes contribution only between tortfeasors held liable in a joint judgment—here joint judgment was precluded by the immunity provision of the New York Workmen's Compensation Act,[65] barring tort recovery against an employer "on account of such injury or death." Still, according to a widely accepted construction, this immunity does not protect against claims for indemnity (as distinct from contribution) on the sophistical ground that indemnity is based not on the personal injury cause of action, but on the relation between indemnitor and indemnitee (here supplier and user of the harmful product). Unfortunately, Dow's indemnity claim seemed jeopardized by the requirement that the claimant's negligence must have

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Virgin Islands, in Gomes v. Brodhurst, 394 F.2d 465 (3d Cir. 1967), and the Seventh Circuit as the federal rule for mid-air collisions in federal airspace in Kohr v. Allegheny Airlines, 504 F.2d 400 (7th Cir. 1974). In addition, comparative fault recently replaced the "equal division" rule for property damage in maritime collisions, in United States v. Reliable Transfer Co., Inc., 421 U.S. 397 (1975), thereby bringing that rule in line with the rule for personal injury under the Jones Act, 46 U.S.C. § 688 (1970), and the Death on the High Seas Act, 46 U.S.C. §§ 761-68 (1970), and the Brussels Maritime Convention of 1910, 37 Stat. 1658, TS 756 (March 1, 1913) (concerning collisions between vessels).

63. In Wisconsin, contribution had been judicially created in 1918 (Ellis v. Chicago & N.W. Ry., 167 Wis. 392, 167 N.W. 1048 (1918)), but comparative negligence was introduced by statute in 1931.

64. 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972), *noted in* 53 A.L.R.3d 175. *Dole* has been the subject of a great deal of law review comment. *See, e.g.*, 58 CORNELL L.Q. 602 (1973); 42 N.Y.U.L. REV. 815 (1972); 24 SYR. L. REV. 462-70, 551-56 (1973).

65. N.Y. WORKMEN'S COMP. LAW § 29(4) (McKinney 1965).

been "passive" and the indemnitor's "active." However, undaunted the court of appeals invented a form of "partial indemnity" for those, like Dow, who could not hope to satisfy that exacting requirement: the court created an indemnity with the remarkable attribute of allowing recovery which, though not a full recovery, was apportioned to the respective degrees of fault of the parties. In thus denying Urban's motion to dismiss Dow's third-party complaint, the court flouted at least three statutory rules: (1) it countenanced contribution under the false label of "indemnity" in violation of the Contribution Act's requirement of a joint judgment;[66] (2) such contribution was to be apportioned to the parties' shares of responsibility, in violation of the Contribution Act's requirement of equal division; and (3) it gave the go-by to the immunity provision of the New York Workmen's Compensation Act by enlarging the court-created exception for indemnity by brazenly mislabeling contribution "partial indemnity."

While this tour de force probably has no equal even in an era that has become accustomed to cynical manipulation of language in public life,[67] far less in the way of violence to the statutory norm is needed in the California context. For the only statutory rule requiring judicial qualification is the equal division rule of the California contribution statute[68] in a situation obviously uncontemplated at the time of its enactment: the situation where the plaintiff also bears a share of responsibility and has become entitled to an apportioned award.[69] Better still,

66. N.Y. Civ. Prac. Law Rules § 1401 (McKinney 1963).

67. The *Dole* court was justified in drawing attention to occasional distortions of the "active-passive" criterion by some courts, but was less than frank in interpreting these distortions "as an attempt at realignment of the rule"). The courts that distorted the criterion were operating against the background of the unreformed common law rule against contribution and understood that indemnity meant a complete shifting of the loss. By contrast, the *Dole* court was faced with a contribution statute and laid an axe to the uniformly understood distinction between contribution (sharing) and indemnity (shifting). The "active-passive" criterion is discussed in Note, *Contribution and Indemnity in California*, 57 Calif. L. Rev. 490 (1969), commenting especially on United Airlines v. Wiener, 355 F.2d 379 (9th Cir. 1964).

Nor is Herrero v. Atkinson, 227 Cal. App. 2d 69, 38 Cal. Rptr. 490 (1st Dist. 1964) a case where the court "although using the language of indemnity, . . . actually applied the principles of equitable contribution, quite like the partial indemnification or comparative negligence of *Dole*." Braun, *supra* note 55, at 202. *Herrero* shifted the *whole* loss caused by the malpractice from the tortfeasor to the negligent physician, while *Dole* shared it between "indemnitor" and "indemnitee." The first was therefore a case of true indemnity for a divisible part of the loss, the second a case of contribution, the sharing of an indivisible loss. *Cf.* Niles v. City of San Rafael, 42 Cal. App. 3d 230, 116 Cal. Rptr. 733 (1st Dist. 1974).

The sauciness of *Dole* is all the more difficult to reconcile with the same court's cautious refusal only 1 year later in Cudling v. Paglia, 32 N.Y.2d 330, 298 N.E.2d 622, 345 N.Y.S.2d 461 (1973) to extend apportionment to contributory negligence, a context in which the legislature had largely withheld its voice.

68. Cal. Code Civ. Pro. §§ 875-80 (West Supp. 1975).

69. Thus Sen. Grunsky's bill, Calif. S.B. 494, 1975-76 Reg. Sess., would mandate

of course, would be a *general* abrogation of the equal division rule, but that reform would be widely regarded as falling more properly to the province of the legislature. A model bill along those lines has (once again) been recently proposed.[70]

A final option for accomplishing a correct distribution of shares that would altogether sidestep the problem of contribution is to abandon the "entire liability" rule, previously considered. Limiting P's claim to only D_1's apportioned share would thus solve not only the problem of D_2's insolvency but also the problem posed either by a "no contribution" rule[71] or, as in California, by a pro rata contribution rule. This solution would not be ideal, since it would apportion shares on the principle of fault when the plaintiff was contributorily negligent but would still apportion shares on the pro rata principle when he was not. But it has two attractions: first, the incongruity is less obvious, and second, this solution could be imposed more easily by the courts since it would involve a modification merely of the judicially created "entire liability" rule instead of the *statutory* pro rata rule of contribution.

2. *The Absent Tortfeasor.* Another problem connected with multiple parties, which the *Li* court identified as deserving the most serious future consideration, arises when all responsible parties are not brought before the court. As Justice Sullivan observed, "[i]t may be difficult for the jury to evaluate relative fault in such circumstances, and to compound this difficulty such an evaluation would not be res judicata in a subsequent suit against the absent wrongdoer."[72]

Fortunately, the virtual absence of case law from other jurisdictions (including the British Commonwealth) suggests that the problem's theoretical difficulty is not matched by its practical importance. The

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apportionment among defendants in accordance with their negligence "when a judgment is rendered against more than one defendant in any such action." "Such action" seems to refer to an action in which a plaintiff's recovery is reduced by reason of his contributory negligence.

A more general measure would require apportionment in all contribution claims, as in Utah. See note 55 *supra*.

The Vermont court in Howard v. Spafford, — Vt. —, 321 A.2d 75 (1974) refused to follow *Dole* and permit contributions among tortfeasors in any form despite the enactment of a comparative negligence statute.

70. Braun, *supra* note 55. For earlier recommendations see Notes, *Contribution and Indemnity in California*, 57 CALIF. L. REV. 490 (1969) and *Joint Tortfeasors: Legislative Changes in the Rules Regarding Releases and Contribution*, 9 HAST. L.J. 180 (1958). As already noted, Utah introduced unequal apportionment simultaneously for contributory negligence and contribution. Thode, *Comparative Negligence, Contribution among Tortfeasors and the Effect of a Release—a Triple Play by the Utah Legislature*, 1973 UTAH L. REV. 406 [hereinafter cited as Thode].

71. This solution is therefore preferred for Florida by Timmons & Silvis, *Pure Comparative Negligence in Florida: A New Adventure in the Common Law*, 28 U. OF MIAMI L. REV. 737, 778-87 (1974).

72. 13 Cal. 3d at 823, 532 P.2d at 1240, 119 Cal. Rptr. at 872.

THE SUPREME COURT OF THE STATE OF ALASKA

JEANNE KAATZ, Administratrix of the Estate of DONALD E. KAATZ, Deceased,

Appellant,

v.

STATE OF ALASKA, et al.,

Appellees.

File No. 2259

OPINION

No. 1187 - Sept. 17, 1975

STATE OF ALASKA, et al.,

Cross-Appellants,

v.

JEANNE KAATZ, Administratrix of the Estate of DONALD E. KAATZ, Deceased,

Cross-Appellee.

JEANNE LINDLEY, Representative of the heirs of Ronald Lindley, Deceased; and ELAC, LTD., an insurance corporation,

Appellants,

File No. 2291

v.

STATE OF ALASKA, et al.,

Appellees.

STATE OF ALASKA, et al.,

Cross-Appellants,

v.

JEANNE LINDLEY, Representative of the heirs of Ronald Lindley, Deceased; and ELAC, LTD., an insurance corporation,

Cross-Appellees.

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Victor D. Carlson, Judge.

Appearances: M. T. Thomas and W. G. Ruddy, Juneau, for Appellant. Allen T. Compton, Juneau, for Appellee.

Before: Rabinowitz, Chief Justice, Connor, Erwin and Boochever, Justices. [Burke, Justice, not participating.]

CONNOR, Justice.

This appeal and cross-appeal result from a superior court ruling which denied any recovery to two wrongful death claimants.

We must decide whether the trial court erred in finding that the negligence of the State of Alaska caused the accident which took the decedents' lives. Additionally, we must decide whether the trial court erred in finding that the decedents' own negligence also contributed to their demise. Finally, if the court below did not err with regard to its findings of fact, we must determine whether the doctrine of contributory negligence should continue to operate as a complete bar to all recovery in cases of this type.

I.

The decedents, Ronald Lindley and Donald Kaatz, were employed by the Burgess Construction Company in early December 1970. At that time the company was working on a project in Wrangell, Alaska. The project required gravel,

which the company customarily obtained from Reid's gravel pit, located three miles south of Petersburg, Alaska, just off the Mitkof Highway.

In order to transport the gravel from the Petersburg area to Wrangell, the following procedure was usually utilized. Donald Kaatz, having taken up temporary residence in the town of Petersburg, readied the gravel at the pit for transportation to Wrangell. Periodically, the Burgess Construction Company would send a barge up the Wrangell Narrows to Petersburg. Before leaving Wrangell, the company would place a front-end loader on the barge. Ronald Lindley, an experienced operator of front-end loaders, would accompany the vessel to the Petersburg barge dock, located approximately four miles south of town.

Kaatz would meet the barge at the dock and, together with Mr. Lonnie Dreka, who supervised the operation, he would help to prepare the barge to carry the gravel back to Wrangell. When this was done, Kaatz and Dreka would drive Kaatz' pickup truck along the Mitkof Highway to the gravel pit, which was one mile north of the barge dock. Lindley would follow, driving the front-end loader.

When the men reached the gravel pit, Lindley would use the loader to fill a truck with gravel. The vehicle was then driven back to the barge dock, where the gravel was placed onto the vessel, along with the front-end loader. Dreka and Lindley then would accompany the barge back to

Wrangell and unload it. Kaatz would return to his chores in and around Petersburg.

On the evening of December 9, 1970, the barge arrived at the Petersburg dock around 7:00 p.m. Kaatz met the barge when it arrived. Lindley, Dreka and the front-end loader were on board. The weather was overcast, with intermittent rain and drizzle. The temperature throughout the day had hovered in the mid to low thirties.

On this particular evening Ronald Lindley did not wait for Dreka to finish preparing the barge for loading. Instead, he and Kaatz set out together in the front-end loader, headed north towards the gravel pit. When the balloon-tired vehicle had traveled approximately half of the one mile distance from the barge dock to the gravel pit, it began to descend a slight grade on the Mitkof Highway. At the base of the grade, the road turned to the right. The vehicle did not reach that curve because, as the loader descended the grade, it toppled off the side of the northbound lane over an embankment. Lindley and Kaatz were both killed.

The widows of these men each brought wrongful death actions against the State of Alaska. They alleged that the state was negligent in that it had failed to adequately maintain the icy road, so that it would be safe for vehicular traffic. Judge Victor D. Carlson tried the case and rendered a verdict for the defendants. In doing so, he specifically concluded that "[t]he negligence of the State of Alaska

[was] a cause of the death of Messrs. Lindley and Kaatz." However, he also found that the icy and very slippery condition of the Mitkof Highway on the evening of December 9, 1970, "was known to Mr. Kaatz before he climbed into the cab of the loader and it became known to Mr. Lindley immediately when the vehicle proceeded onto the highway." In addition, he found that it was "unreasonable for any person experienced with a front-end loader to operate such a vehicle on the highway" under those conditions. He thus concluded that the contributory negligence of the decedents was a complete defense to their claims.[1/]

The appellants contend that Judge Carlson clearly erred in finding that the decedents' conduct constituted contributory negligence. Alternatively, they urge us to abandon the doctrine of contributory negligence and adopt a "pure" comparative negligence formula instead.

The state, in its cross appeal, contends that the court erred in finding that it was negligent in its maintenance of the road and that such negligence caused the deaths of Lindley and Kaatz. The state also argues that Judge Carlson did not err in finding that the decedents were negligent and urges us not to abandon the doctrine of contributory negligence

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1/ Judge Carlson indicated on the record that he did not favor the doctrine of contributory negligence, but was constrained by precedent to apply it.

in favor of comparative negligence. The record presented in this case requires us to address each of the contentions that has been raised.

II.

We shall begin our analysis by determining whether the trial court erred in finding that negligence on the part of both the state and the decedents caused the accident. At the outset it is useful to restate the standard for review of judge-tried cases in which all pertinent claims of error are predicated on an assertion of insufficient evidence. In Alaska Foods Inc., v. American Manufacturer's Mutual Insurance Co., 482 P.2d 842, 848 (Alaska 1971), we stated:

> "The rule is this: Under Civil Rule 52(a) we shall not set aside the finding of fact of a trial judge unless it is clearly erroneous. A finding is clearly erroneous when, although there may be evidence to support it, we are left with the definite and firm conviction on the entire record that a mistake has been committed.
>
> This rule applies to any finding, regardless of the nature of the evidence upon which it is based. The only difference between our review of findings based on oral testimony, and those based on documentary evidence or undisputed facts, is that in the former case we must pay some deference to the trial judge's assessment of the credibility of witnesses, whereas in the latter case we need not. It is because of the deference we pay to the trial judge's assessment of credibility of witnesses where there is oral testimony that we have characterized our scope of review in cases where there is no oral testimony as being a 'broader' type of review. Even in the latter situation, clear error must appear under the rule we apply.

> The clearly erroneous standard, as we apply it, means something more than merely showing it is more probable than not that the trial judge was mistaken. We must be convinced, in a definite and firm way, that a mistake has been committed. We must be well persuaded by the party seeking to set aside the trial judge's findings before we will hold he was wrong." (footnotes omitted) 2/

With this standard in mind, we turn to the factual issues in this case.

The state, in its cross appeal, contends that its highway maintenance crew was not negligent in having failed to sand the Mitkof Highway before the accident occurred.

In State v. Abbott, 498 P.2d 712 (Alaska 1972), we held that the state has a duty to exercise reasonable care to maintain Alaska's highways in safe condition. 3/ That duty certainly extends to hazards created by ice and snow.

A breach of this duty of care occurs whenever lack of reasonable road maintenance exposes a person to an unreasonable risk of harm. In Abbott we stated:

> "In order for a plaintiff to show that the state exposed him to an unreasonable risk of harm he would have to demonstrate that the likelihood and gravity of the harm threatened outweighed the utility of the state's conduct and the burden on the state for removing the danger. In making that determination in the case at bar, all of the following factors would be relevant: whether the state had notice of the dangerous condition, the length of time the ice and snow had been on the highway, the availability of men and equipment,

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2/ Accord, Ficke v. Alaska Airlines, 524 P.2d 271, 274 (Alaska 1974).

3/ See also State v. I'Anson, 529 P.2d 188, 193-94 (Alaska 1974).

and the amount of traffic on the highway." 498 P.2d at 725. (footnotes omitted, emphasis in original)

In the present case, the evidence clearly supports a finding of negligence on the state's part.

Evidence at trial established that by 6:00 p.m. on the date of the accident, the state had both actual and constructive notice regarding the dangerous condition of the highway. For example, testimony established that by noon the road was dangerous, and that by 5:00 p.m. it was extremely dangerous, the worst that some Petersburg observers had ever seen. In a deposition, the school bus driver stated the he had alerted school authorities of the dangerous road conditions in mid-afternoon. Indeed, the state's road maintenance foreman in Petersburg, Mr. Cecil H. Donahue, conceded that he drove the road between 5:00 and 6:00 p.m., and he knew then that the road "probably did need sanding." Notice to Donahue was notice to the state in these circumstances.

The accident occurred at approximately 8:00 p.m. By that time the road had been in a bad condition for many hours. Since the highway maintenance facility was only about one mile from where the accident took place, time, in conjunction with logistics, would not have been a barrier to sanding the road. Nevertheless, the state did not begin sanding until after the accident.[4/]

4/ Compare Tetreault v. State, 269 N.Y.S.2d 812 (Ct. Cl. 1966), where the state began sanding 1/2 hour after it became aware of

Regarding the availability of men and equipment, suffice it to say that shortly after the accident, the road in fact was sanded.[5/]

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4. (Cont'd.)

the icy conditions. The court found that the state was not negligent, despite its failure to reach and sand that portion of the highway where the accident occurred.

5/ This does not mean that proof of subsequent repairs is to be admitted as direct evidence of negligence. Cf. Otis Elevator Co. v. McLaney, 406 P.2d 7, 15 (Alaska 1965); Gunsolus v. City of Fairbanks, 391 P.2d 13, 14 (Alaska 1964); City of Anchorage v. Steward, 374 P.2d 737, 739-40 (Alaska 1962). Rather, Alaska's position on this matter comports with the Federal Rule of Evidence 407, which provides:

> "When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent mwasures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment." (emphasis added)

Specifically, in State v. Abbott, 498 P.2d 712, 725 (Alaska 1972), we held that "availability of men and equipment" is a relevant factor in determining whether lack of road maintenance exposed plaintiff to an unreasonable risk of harm. Such evidence is crucial in determining whether a defendant could have done what plaintiff is claiming should have been done.

Therefore, the fact that the road maintenance crew in the present case did sand the Mitkof Highway shortly after the accident is admissible to prove that the road also could have been sanded before that time.

As to the amount of traffic on the highway, foreman Donahue stated that the accident occurred on the "most heavily traveled" portion of the Mitkof Highway. Other evidence established that, even on that raw, nasty night, numerous other vehicles were on the road.

Finally, we have held that an unexcused violation of administrative regulations may be negligence itself, or may be relevant evidence bearing on the issue of negligent conduct. Ferrell v. Baxter, 484 P.2d 250, 263-64 (Alaska 1971). The Department of Highways has adopted certain "standard operating procedures" with regard to highway maintenance. S.O.P. 4301-06 provides at page 13:

> "Sanding crews must be dispatched at the first indication that traffic is having difficulty, with particular attention given to intersections and grades. Maintenance crews in outlying areas must keep steep grades and sharp curves well sanded, working overtime and at night if conditions warrant. Maintenance foremen must be alert to this condition and plan accordingly, and employees should be instructed to report for duty when inclement weather threatens. Sanding operations must continue as long as conditions warrant. First priority should be given to hills, intersections and curves. In the vicinity of the more populated areas, sanding crews should be dispatched in sufficient time to provide protection for the early morning and evening traffic proceeding to and from work and school."

Certainly the spirit, if not the letter of this regulation, was not complied with. The record, as a whole, shows no clear error whatever in Judge Carlson's finding that the state was negligent.

The state also argues that Judge Carlson erred in finding that the state's negligence caused the front-end loader to topple off the road. It contends that the evidence shows that the loader was simply driven off the road. Since there is no indication of slipping or sliding prior to the vehicle falling off the road, the state seemingly reasons that the icy road conditions did not cause the accident.

However, appellants never contended that the vehicle slid off the road. Their theory is that in order to obtain traction on a downhill grade with a rightward turn at the end, the driver of the vehicle was forced to allow his rig to go into the snow berm on the side of the road. The accident occurred when the berm suddenly and unpredictably broke through or ran out, causing the rig to topple off.

Appellants came forward with several witnesses who had extensive experience with operating heavy equipment. They testified that the driver probably had driven into the berm to obtain traction, and that this was the proper and only recourse available, once the vehicle started down the icy grade. To overcome this showing, the state offered highly speculative testimony to the effect that the men might have simply driven off the road during a moment of inadvertence.

In City of Fairbanks v. Schaible, 375 P.2d 201, 204 (Alaska 1962), we stated:

> "A mere possibility of causation is not enough. When the matter remains one of conjecture . . . the trial court must find against the party carrying the burden of proof."

Appellants produced substantial testimony tending to show that decedents were forced to drive into the snow berm to obtain traction. That the vehicle did not leave the main road before descending the grade also substantiates this theory. We find that no error was made in the ruling that the state's negligence in failing to sand the road was a cause of the accident.

Turning to the conduct of the decedents, appellants urge that Judge Carlson erred in finding that Lindley and Kaatz were also negligent on the night of December 9, 1970. Because the facts surrounding the conduct of each man differ slightly, we will consider each case separately.

With regard to Ronald Lindley, Judge Carlson found that:

> "22. The condition of the Mitkof Highway . . . became known to Mr. Lindley immediately when the vehicle proceeded onto the highway.
>
> 23. The condition of the Mitkof Highway on the evening of December 9, 1970 was so slippery that it was unreasonable for any person experienced with a front-end loader to operate such a vehicle on the highway except in case of an emergency."

Having apparently determined that Lindley's conduct was both voluntary and unreasonable,[6/] the judge concluded that Lindley's own negligence was a cause of his death.

6/ Cf. Hale v. O'Neill, 492 P.2d 101, 103 (Alaska 1971); Young v. State, 491 P.2d 122, 124-25 (Alaska 1971).

It is well established that knowingly crossing icy terrain in and of itself does not constitute negligent conduct.[7] On the other hand, we have often intimated that knowing or having reason to know of such a dangerous condition is a minimum prerequisite to establishing negligence on the part of a plaintiff.[8] In Ronald Lindley's case we must attempt to determine whether it was unreasonable to infer that he knew or should have known of the Mitkof Highway's icy condition immediately upon entering into it.[9]

Our review of the record suggests that, in concluding that Lindley was aware of the road's condition immediately upon entering onto it, Judge Carlson apparently inferred knowledge based on the testimony of witnesses who stated that the road generally was very icy by late afternoon. However, the only direct testimony regarding the condition of the road immediately in front of the barge dock supports

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7/ Kremer v. Carr's Food Center, Inc., 462 P.2d 747, 752 (Alaska 1969); Cummins v. King & Sons, 453 P.2d 465, 467 (Alaska 1969); Hale v. City of Anchorage, 389 P.2d 434, 436 (Alaska 1964); Peterson v. Lang, 58 N.W.2d 609, 612 (Minn. 1953).

8/ See Roach v. Benson, 503 P.2d 1392, 1394 (Alaska 1972); Cummins v. King & Sons, 453 P.2d 465, 467 (Alaska 1969); Saslow v. Rexford, 395 P.2d 36, 41 (Alaska 1964); Hale v. City of Anchorage, 389 P.2d 434, 436 (Alaska 1962).

9/ Nothing in Judge Carlson's findings or in any of the briefs on record suggests that Lindley had any knowledge of the road's condition prior to going onto it. Nor is it likely that he would have had such prior knowledge since he did not live in Petersburg, and had arrived at the barge dock only shortly before the accident occurred.

the conclusion that Lindley would not have realized the hazardous condition until it was too late to do anything about it, i.e., after the loader started down the grade, one-half mile from the barge dock.

Mr. Dreka, who was supervising the men that night, drove his truck, without chains, to the crash scene. He did not recall having any problem driving to the scene. Additionally, a local resident testified that the road conditions varied from one spot to another, and that the area across from the barge landing wasn't always as bad as other spots on the road. Finally, there was no evidence that the loader encountered any difficulty prior to reaching the downhill grade.

There is nothing in the record to suggest that it is per se unreasonable to drive a front-end loader on either snowy or wet roads. Although such a vehicle has a propensity for instability on icy roads, every witness with experience on heavy equipment had driven similar equipment in inclement weather.

It is well established that something more than the mere occurrence of an accident generally must be shown before an inference of lack of due care will arise.[10/] We have

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10/ See Cummins v. King & Sons, 453 P.2d 465, 467 (Alaska 1969); W. Prosser, Torts, § 39 at 211 (4th ed. 1971); 11 Blashfield, Automobile Law and Practice, § 417.2 at 116 (1968).

previously held that, if there is no evidence from which a judge could reasonably infer contributory negligence, a finding of contributory negligence constitutes clear error and must be reversed. Roach v. Benson, 503 P.2d 1392, 1394 (Alaska 1972).

In the case of Ronald Lindley, we are unable to ascertain from the findings of fact which Judge Carlson entered, what evidentiary basis he relied upon in concluding that Lindley's conduct was negligent. Specifically, we are uncertain about the evidentiary underpinnings for finding of fact #22, which states that the slippery condition of the Mitkof Highway "became known to Mr. Lindley immediately when the vehicle proceeded onto the highway." Certainly if Lindley did know of the icy conditions of the road, and yet voluntarily proceeded to drive on it in an unstable front-end loader, that conduct could be found to constitute negligence. But, if Lindley reasonably realized the condition of the road only at a time and place at which it was too late to halt the vehicle, negligence would have to be predicated on something other than the mere fact that he was driving an unstable vehicle in known icy conditions. Therefore, we remand this portion of the case for further findings of fact regarding the basis for the conclusion that Lindley was negligent.[11/]

11/ The state has argued that certain other facts established Lindley's negligence that night. Thus, it has been noted that Lindley departed in the loader without advising Dreka of

In the case of Donald Kaatz, the circumstances are somewhat different. The trial judge found that Donald Kaatz "had driven the portion of the Mitkof Highway which was . . . traversed by the loader within a short time before he climbed into the . . . loader" for the fatal trip. He also found that the condition of the Mitkof Highway "was known to Mr. Kaatz before he climbed into the . . . loader" that night. Finally, the court found that it was unreasonable to operate a loader under those conditions. Therefore, Judge Carlson concluded that Kaatz' conduct was negligent.

There are several facts in the Kaatz case which support the finding that Kaatz had traveled the road shortly before the accident and therefore knew the condition of the road. First, he was living in Petersburg, four miles north of the barge site, on the day in question. Second, he met the barge when it arrived at about 6:30 or 7:00 p.m. that

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11. (Cont'd.)

his departure. While the "usual practice" consisted of Dreka and Kaatz preceeding Lindley and the loader with a pickup truck, there was no evidence that a variation from the normal procedure had any bearing on the accident.

The state has noted that Lindley and Kaatz were both riding in the loader's cab in violation of company policy. While this is not disputed, there is no evidence showing any causal connection between the violation and the accident. In addition, evidence suggests that the presence of two men in a cab is not uncommon.

Finally, there was evidence that another loader was already at the gravel pit and therefore it might not have been necessary to drive the death vehicle at all that night. This fact is only relevant if Lindley had been aware of the road's condition.

night, having driven to the barge site in the company's pickup truck. Finally, certain precautionary flares, which Kaatz usually lit when the company was about to load gravel, were lit when the barge arrived at the Petersburg dock that night.

It is entirely reasonable to infer from these facts that Kaatz had driven to the dock shortly before the barge arrived. It seems implausible that Kaatz would have arrived early and waited at the dock for a long time, since the weather was raw and nasty and his home was only a short distance from the dock. Although several witnesses had driven past the dock earlier in the day, there was no testimony placing Kaatz at the dock at any appreciable time before the arrival of the barge.

If Kaatz did drive the road shortly before climbing into the loader, then it is apparent that he would have or should have perceived the treacherous and unsanded condition of the road. If, despite such knowledge, he chose to ride in the cab of a vehicle which is notoriously "unstable" on ice, then his conduct can be properly said to be voluntary and unreasonable. We hold that the trial court did not commit clear error in ruling that Kaatz' conduct that evening was negligent.

III.

Since we find no clear error in the trial court's ruling that Donald Kaatz was contributorily negligent on the night of the accident, we must next decide whether such negligence should continue to operate as a complete bar to recovery in cases such as this.

Initially we must consider a procedural objection which the state raises, regarding our review of the issue. The state points out that plaintiff Kaatz first presented the issue of comparative negligence to the trial court on a motion to amend and supplement the court's findings of fact and conclusions of law. It is urged that the issue was not presented below in a timely manner, and therefore is not properly before this court on appeal.[12/]

We have consistently held that an issue which was not raised in the trial court will not be reached on appeal.[13/] Likewise, in jury cases, one cannot await the jury's verdict before objecting to various aspects of the preceding trial.[14/]

12/ We note that the state has devoted one paragraph to this procedural contention, and has not cited any authority in support of its claim. This normally would render the state's claim non-meritorious. Wernberg v. Matanuska Electric Association, 494 P.2d 790, 794 (Alaska 1972). However, because of the importance of the issue in question, we will briefly address the argument.

13/ See, e.g., University of Alaska v. Simpson Building Supply Co., 530 P.2d 1317, 1324 (Alaska 1975); Powell v. Alaska Marine Equipment, Inc. 453 P.2d 407, 410 (Alaska 1969).

14/ See Veal v. Newlin, Inc., 367 P.2d 155, 157 (Alaska 1961).

But, in this judge-tried case, appellant called the matter to the attention of the trial court by motion, memorandum and oral argument, and the trial court expressly rejected appellant's contention. Under these circumstances the issue is properly before us on appeal.[15/] We now turn to the question of whether the doctrine of contributory negligence should have continued vitality in Alaska.

Contributory negligence is the failure of a plaintiff to use due care for his own safety. When contributory negligence is a substantial factor in bringing about a plaintiff's harm, it operates in law to prevent a recovery of damages by him, even though he was injured through the negligence of the defendant. Restatement (Second) of Torts § 463 (1965). This has been the rule followed in Alaska in the past. Saslow v. Rexford, 395 P.2d 36, 41 (Alaska 1964); Ogden v. State, 395 P.2d 371, 372 (Alaska 1964); Bertram v. Harris, 423 P.2d 909, 914 (Alaska 1967).

The contributory negligence doctrine is of judicial origin. Traditionally it is ascribed to the opinion of Lord Ellenborough in Butterfield v. Forr ter, 103 Eng. Rep. 926 (K.B. 1809). In that case plainti' was riding on his horse at a fast pace on the highway. He ran into an obstruction in the roadway which had been left there by defendant. While

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15/ Cf., Church v. Roemer, 498 P.2d 1255, 1258 n.3 (Idaho 1972); Williams v. Idaho Potato Starch Co., 245 P.2d 1045, 1050 (Idaho 1952).

the case car be interpreted as merely a holding that the plaintiff was himself the sole cause of the accident,[16] it gave rise to the broad and sweeping principle described above. This principle held full sway in the nineteenth century and still persists in the twentieth century, although it has undergone modifications and has been replaced in many jurisdictions by some system of comparative negligence.

Contributory negligence is an "all-or-nothing" doctrine. When it is operative it is a total bar to recovery by an injured plaintiff. A comparative negligence rule, on the other hand, seeks to apportion damages, i.e., distribute responsibility, in proportion to the degree of fault attributable to the parties who have negligently caused an injury.

It should be noted that comparative negligence systems have long been employed in other nations and in various jurisdictions in the United States. In one form or another it is the system employed for apportioning damages in at least 27 states.[17] In

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16/ See V. Schwartz, Comparative Negligence 3-4 (1974). Apparently Lord Ellenborough's rationale is somewhat terse:

> "[A] party is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it, if he does not himself use common and ordinary caution to be in the right." 103 Eng. Rep. at 927.

17/ See Li v. Yellow Cab Co., 532 P.2d 1226, 1232, n.6 (Cal. 1975). These states include Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming, and most recently, California.

federal law comparative negligence has long been employed in admiralty personal injury cases. Under federal statutes it has been applicable since 1908 to cases arising under the Federal Employers Liability Act, 45 U.S.C. § 53, and since 1920 to cases arising under the Jones Act, 46 U.S.C. § 688, and under the Death on the High Seas Act, 46 U.S.C. § 766. It has long been used in other nations of the civilized Western world.[18/] Moreover, in England, the source of Butterfield v. Forrester, supra, and its precedential descendants, Parliament abolished the contributory negligence defense in 1945 and replaced it with a pure comparative negligence rule for apportioning damages.[19/]

The benefits to be derived from a comparative negligence rule are several. It diminishes the need to employ rules which are designed to ameliorate the harshness of the contributory negligence rule. For example, the "last clear chance" doctrine becomes largely superfluous in jurisdictions which employ the comparative negligence rule. It is said that comparative negligence provides a better distribution of risk under a fault system of liability, for both plaintiffs and defendants benefit to the extent of their respective blameworthiness or lack thereof.[20/]

18/ See V. Schwartz, supra note 16, at 9-10. These countries include Austria, Canada, France, Germany, the Philippines, Portugal, and Spain.

19/ Law Reform Act of 1945, 8 & 9 Geo. 6, c. 28.

20/ See V. Schwartz, supra note 16, at 339-41.

The supporters of the contributory negligence rule have argued that fault cannot be measured on a scientific basis, that contributory negligence is a deterrent to careless conduct, that comparative negligence is difficult for courts to administer, and that settlement of negligence cases is encouraged by the contributory negligence rule.[21/] Contrary arguments have already been presented.

Although jurors' verdicts are not precisely scientific, an allocation of proportionate fault approaches reality more closely than the total loss or victory represented by the contributory negligence rule. As to the deterrent effect of the contributory negligence rule, Dean Prosser points out that the law must also aim to deter wrongful conduct by defendants and not only plaintiffs.[22/] Judicial administration of the rule has not presented insuperable difficulties in those jurisdictions which have long employed it. Experience has not borne out the argument that comparative negligence is difficult for courts and juries to apply.

Similarly, careful studies tend to show that settlement of cases can be achieved as readily under the

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21/ Id. at 335-37.

22/ W. Prosser, Comparative Negligence, 51 Mich. L. Rev. 465, 468 (1953).

comparative negligence system as under the contributory negligence rule.[23] Studies have also shown that the effect of the comparative negligence rule on insurance rates is minimal.[24]

The central reason for adopting a comparative negligence system lies in the inherent injustice of the contributory negligence rule. As the California Supreme Court recently observed concerning the contributory negligence doctrine:

> "It is unnecessary for us to catalogue the enormous amount of critical comment that has been directed over the years against the 'all-or-nothing' approach of the doctrine of contributory negligence. The essence of that criticism has been constant and clear: the doctrine is inequitable in its operation because it fails to distribute responsibility in proportion to fault. Against this have been raised several arguments in justification, but none have proved even remotely adequate to the task. The basic objection to the doctrine--grounded in the primal concept that in a system in which liability is based on fault, the extent of fault should govern the extent of liability--remains irresistible to reason and all intelligent notions of fairness." Li v. Yellow Cab Company, 532 P.2d 1226, 1230-31, (Cal. 1975) (footnotes omitted).

23/ Rosenberg, Comparative Negligence in Arkansas: A "Before and After" Survey, 36 N.Y.S.B.J. 457 (1964).

It has been reported that in maritime personal injury cases involving a federal question, in which a comparative negligence standard is used, only 9.6% of the cases terminated in 1974 ever reached trial. Annual Report of the Director of the Administrative Office of the United States Courts, Table C4, at 429 (1974). This supports the argument that a comparative negligence standard does not seriously discourage settlements.

24/ V. Schwartz, supra note 16, at 337-38.

And as Professor Prosser has stated:

> "The hardship of the doctrine of contributory negligence upon the plaintiff is readily apparent. It places upon one party the entire burden of a loss for which two are, by hypothesis, responsible. The negligence of the defendant has played no less a part in causing the damage; the plaintiff's deviation from the community standard of conduct may even be relatively slight, and the defendant's more extreme; the injured man is in all probability, for the very reason of his injury, the less able of the two to bear the financial burden of his loss; and the answer of the law to all this is that the defendant goes scot free of all liability and the plaintiff bears it all." W. Prosser, Torts 433 (4th ed. 1971).

Of great significance to us is the recent adoption of a comparative negligence rule by judicial decision in other jurisdictions. In many instances the rule has been adopted through legislative action, but increasingly it is perceived that a rule which is judicial in origin can be, and appropriately should be,[25/] altered by the institution which was its creator.[26/] Thus Florida in Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973), and California in Li v. Yellow Cab Co., 532 P.2d 1226 (Cal. 1975), through the judicial process have overturned the contributory negligence rule and have replaced it with the comparative negligence principle.

We are also particularly impressed with a recent decision of the United States Supreme Court in the field of

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25/ See Leflar, Comments on Maki v. Frelk, 21 Vand. L. Rev. 918, 926-29 (1968).

26/ Contra, Maki v. Frelk, 239 N.E.2d 445, 447 (Ill. 1968); Krise v. Gillund, 184 N.W.2d 405, 409 (N.D. 1971).

admiralty. In United States v. Reliable Transfer Co., -U.S.-, 44 L.Ed 2d 251 (1975), the Court discarded the historic rule of divided damages in maritime collision cases and replaced it with a pure comparative negligence rule. Hereafter liability for property damages in admiralty collision cases will be allocated in proportion to the fault of each party.

The Court's reason for abandoning the divided damages rule is relevant to our consideration of the contributory negligence rule: the divided damages rule, like the contributory negligence rule, yields palpably crude and inequitable results in cases where the degree of fault is greatly disproportionate. Furthermore, the Court was persuaded by the rejection of the rule by every other maritime nation in the world. All other maritime nations, including England where the rule emerged, employ a proportionate fault measure of damages in marine collision cases.

It appears to us that continued adherence to the contributory negligence rule, absent legislative change, represents judicial inertia rather than a reasoned consideration of the intrinsic value of the rule. We are persuaded that the contributory negligence rule yields unfair results which can no longer be justified. We hold, therefore, that the doctrine of contributory negligence shall no longer be applicable in Alaska, and in its stead the principle of comparative negligence must be applied.

Systems of comparative negligence can take several forms. Under a "pure" form the plaintiff's damages are simply reduced in proportion to the amount of negligence which is attributed to him. There are also several "modified" forms of comparative negligence. One of these is the divided damages rule in maritime collision cases, which has now been abolished. Another is the 50% system, applicable by statute in many of the states. Under that system a negligent plaintiff may recover so long as the amount of his fault does not exceed 50% of the total fault attributable to the parties.[27] We are convinced that the pure system is the one which is the simplest to administer and which is best calculated to bring about substantial justice in negligence cases. It is the system most favored by modern jurists and commentators.[28] We will employ the pure system of comparative negligence hereafter in Alaska.

Our adoption of this new principle does not, of course, end our judicial tasks in this area. Subsidiary questions and problems concerning the relationship of the new rule to other doctrines of tort law must necessarily be adjudicated in the future. We must, for the most part,

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27/ There are numerous variations of the modified system. These are discussed at length in V. Schwartz, supra note 16, at 73-82.

28/ See, e.g., Hoffman v. Jones, 280 So. 2d 431, 436-37 (Fla. 1973); Li v. Yellow Cab Co., 532 P.2d 1226, 1240 (Cal. 1975); United States v. Reliable Transfer Co., 43 U.S.L.W. 4610, 4612-14 (May 19, 1975); V. Schwartz supra note 16, at 341-48.

await future cases for the further development of law in this field.

We are, however, prepared to deal with one facet of the comparative negligence rule at this time: the status of the doctrine of "last clear chance". The rationale underlying this doctrine is that even though the plaintiff has been contributorily negligent he should still be able to recover his entire damages if the defendant had the last opportunity to avoid the accident. The application of the doctrine is particularly apt in cases where the plaintiff is in a helpless predicament, owing to his own negligence, and the defendant, although perceiving plaintiff's situation and realizing the plaintiff's peril, fails negligently thereafter to avoid injuring the plaintiff.[29/] Unfortunately the search for limits to the doctrine and for the proper sphere of its application has led to great confusion in the law of tort, much of which can probably never be dispelled.[30/] But it is

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29/ The doctrine had its origins in the English case of Davies v. Mann, 152 Eng. Rep. 588 (1842). Plaintiff there left his ass fettered upon the highway, and the defendant drove into it. It was held that plaintiff could recover, despite his negligence, if the defendant might by proper care have avoided injuring plaintiff's animal. One commentator has said,

> "[T]he doctrine has been in search of a lucid rationale ever since." V. Schwartz, supra note 16, at 129.

30/ See the dicussion in W. Prosser, Torts, 427-33 (4th ed. 1971).

recognized by nearly all who have reflected upon the subject that the last clear chance doctrine is, in the final analysis, merely a means of ameliorating the harshness of the contributory negligence rule.[31] Without the contributory negligence rule there would be no need for the palliative doctrine of last clear chance. To give continued life to that principle would defeat the very purpose of the comparative negligence rule--the apportionment of damages according to the degree of mutual fault. There is, therefore, no longer any reason for resort to the doctrine of last clear chance in the courts of Alaska.[32]

Lastly, we must determine the extent to which the rule we have announced today shall have application to cases other than those which are filed in the future. The rule will, of course, apply in the retrial of the case in which we have reversed the judgment today. It will also apply to any case in which the trial commences after the date of this opinion. In any case pending on direct appeal in which the

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31/ See, e.g., id. at 433; Cushman v. Perkins, 245 A.2d 846, 850 (Maine 1968); Li v. Yellow Cab Co., 532 P.2d 1226, 1237 (Cal. 1975).

32/ This is not to say that the notion of last clear chance is unavailable as a matter of trial court advocacy. Either party may attempt to persuade the trier of fact that one party or another should bear a greater proportion of the liability for an accident by reason of the factual pattern adduced, including a consideration of the helplessness or inattentiveness which may have led to a plaintiff's predicament, with subsequent injury at the hands of a negligent defendant.

application of the comparative negligence rule was requested or asserted in the trial court, and in which the request or assertion was preserved as a ground for appeal, there shall be a retrial under the principle of comparative negligence. Our holding today will be applicable to any trial which has commenced, but has not been submitted for decision by the trier of fact, and in which prior to submission to the trier of fact for decision there has been a request or an assertion that the rule of comparative negligence should be applied.

We observe that in the present case defense counsel offered no evidence with regard to the issue of damages. This may have occurred because of a belief by defense counsel that under the contributory negligence doctrine plaintiffs' claims should have been barred entirely. Since we have abandoned the contributory negligence doctrine today, we feel that it is appropriate to require a new trial on the issue of damages.

We remand this case to the superior court for further proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART.

March 1, 1977

MEMO

file HB 124

TO: Terry Gardiner
Steve Cowper

FROM: John Sund JS

RE: Hb 124

HB 124 is scheduled for hearing in the Judiciary for Wednesday, March 2, 1977. On my advice that bill has been taken off the calendar for a brief period of time for further review prior to a hearing.

I have not had a chance to talk with Mr. Cowper directly regarding the intent behind the bill and what it is to accomplish. There are several facists of comparative negligence which are not delt with in the bill and which are really the guts of deciding where comparative negligence is going to go in the State of Alaska. The present bill, as written, basicly does not add anything to the Supreme Courts' decision in the Kaatz-Linsley case.

The area of multiple defendants is not addressed in the bill. The basic question is whether, in the situation of multiple defendants, where one of the defendants is insolvent that the other defendants will be jointly and seperately liable for the damages.

It may be that the sponsors of the bill have resolved that issue and the bill, in fact, does represent all of the areas they wish it to address but I have not had a chance to discuss that with them. I know the Bar Association is attempting to come up with a position on the issue of the multiple defendants and to the best of my information would like to testify at the hearing. I also talked to Milard Ingrham, an attorney in Fairbanks, who is a member of the Alaska Bar Association Civil Rules Committee and also had sent a letter regarding the Uniform Comparative Fault Act to Rep. Cowper. In that conversation, he indicated he would like to testify before the Committee on the bill and that the present HB 124 as introduced did not address the major issues that he considered to be necessary.

I will attempt to contact Legislative Affairs to see who drafted the bill. Hopefully we can put the bill back on the calendar for early or the middle part of next week.

Introduced: 1/28/77
Referred: Commerce and Judiciary

IN THE HOUSE BY COWPER AND BROWN

HOUSE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to comparative fault."

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

* Section 1. AS 09.16.020(1) is amended to read:

(1) their relative degrees of fault shall <u>be the basis for allocation</u> [NOT BE CONSIDERED];

* Sec. 2. AS 09 is amended by adding a new chapter to read:

CHAPTER 17. COMPARATIVE FAULT.

Sec. 09.17.010. CLAIMANT'S CONTRIBUTORY FAULT. In a tort action for damages based on negligence, recklessness, or strict liability (including breach of warranty), a claimant's contributory fault does not bar recovery but has the effect of diminishing his damages proportionately according to his own fault or the fault attributable to him. In a derivative action or an action for wrongful death, the claimant's damages are diminished according to the fault of any person whose conduct might otherwise have barred the liability. This section applies whether or not the contributory fault previously constituted a defense and replaces such common law principles as last clear chance and implied assumption of risk.

Sec. 09.17.020. SPECIAL INTERROGATORIES. In a tort action involving contributory fault, the court, unless otherwise requested by the parties, shall instruct the jury to give answers to special interrogatories (to render special verdicts), or make findings itself if there is no jury, indicating

(1) the amount of damages each claimant would recover if con-

tributory fault were disregarded; and

(2) the percentage of the fault for each party to the action as compared with the combined fault of all parties to the action. For this purpose, the court may determine that two or more persons are appropriately treated as a single party.

Sec. 09.17.030. DAMAGES SET OFF. Damages awarded under this chapter may be set off only to the extent that an award against one party cannot be collected.

Sec. 09.17.040. INJURIES AFFECTED. This chapter applies to all injuries incurred after the effective date of this Act.

Sec. 09.17.050. SEVERABILITY. If any provision of this chapter or application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Millard Ingram

→ Florida – does –

multi

Joint tort feasors

Brown

Cooper

Roddy

RICE, HOPPNER & HEDLAND
ATTORNEYS AND COUNSELORS AT LAW
SUITE A-330 WENDELL STREET
P.O. BOX 2551
FAIRBANKS, ALASKA 99707
(907) 452-1201

JULIAN C. RICE
LLOYD I. HOPPNER
JOHN S. HEDLAND
GEORGE S. SMALL
MILLARD F. INGRAHAM
HUGH W. FLEISCHER
CHRISTOPHER R. COOKE
SAUL R. FRIEDMAN
PATRICK T. BROWN
DAVID A. ENGELS
LINDA L. WALTON
MARK I. WOOD
NIESJE J. STEINKRUGER
ROGER BRUNNER
STEPHANIE J. COLE
CHARLES J. CLASBY
OF COUNSEL

ANCHORAGE OFFICE
1016 WEST 6TH AVENUE (99501)
(907) 279-5528

BETHEL OFFICE
P.O. BOX 555 (99559)
(907) 543-2850

VALDEZ OFFICE
P.O. BOX 466 (99686)
(907) 835-4385

December 30, 1976

Representative Steve Cowper
Pouch V
Juneau AK 99811

Re: Uniform Comparative Fault Act

Dear Steve:

Enclosed please find a copy of Uniform Comparative Fault Act with my proposed modifications. I have already spoken to you generally about the Act.

As I mentioned, the Act first came to my attention s a member of the Alaska Bar Association Civil Rules Committee. The Act was sent to us by Chief Justice Boochever with the request that we review it with the idea, I assume, of adopting it as a Civil Rule. All members of the committee felt they were disqualified from acting with regard to the Act because all had cases pending that would be directly affected by some portion of the Act. Furthermore, all members of the committee felt that the matters contained in the Act were more appropriately the subject for legislation rather than rules. Regardless of what our committee felt, I believe it can be inferred from Chief Justice Boochever's request to the committee that if the legislature does not adopt some sort of legislation implementing comparative negligence in Alaska, the court will do so by rules.

The main argument that I have with the proposed Act is in section 3. Under section 3, the common law doctrine of joint and several liability of joint tort feasors is abolished and all parties, including the injured party, must share proportionately in the insolvency of an uninsured or otherwise insolvent tort feasor. This is not the law in other jurisdictions that have considered the problem. See 57 Am. Jur. 2nd, Negligence §435, especially notes 12, 13, and 14, a copy of which I am enclosing. The whole theory of comparative negligence is that a tort victim should be penalized in recovery from a tort feasor in an amount equal to his contribution to his own injuries. It would be contrary to the humanitarian spirit of the doctrine to further penalize the tort victim for the

insolvency of one or more tort feasors. Furthermore, the proposed Act, in practice, would severely complicate litigation. I can imagine in every action filed under the proposed Act, that defendants would attempt to join every potential insolvent defendant around in an effort to decrease their own liability. I have had many cases where potential defendants are not joined because they are uninsured or otherwise insolvent and to join them under such circumstances would merely complicate the litigation. Defendants in such actions have not joined them either because, under the rule of joint and several liability, they know that they could not collect contribution from them. But if there is no joint and several liability, there would be very good reason for defendants to join insolvent defendants in an effort to reduce their own liability to the plaintiff.

The other changes that I have made are strictly technical. I have everywhere changed "plaintiff" to "claimant" and "defendant" to "tort feasor". The reason for this is that often a tort claimant may be cast in the role of a counterclaiming defendant and a tort feasor may be cast in the role of a plaintiff. In section 5, I have adopted alternative 1, for the reasons stated in the second paragraph of the comments, and for the reason that some defendants, may be uninsured but have assets or be self-insured. I believe that the amendment to the Uniform Contribution Among Tort Feasors Act should be adopted.

I wish that you would attempt to get this Uniform Act, as amended by me, adopted as law. I have no particular vanity about draftsmanship and would be agreeable to any language so long as the end is accomplished.

If you have any questions, please do not hesitate to call me collect, either at the office (452-1201) or at home (456-5000). I would like to go to Juneau to testify at any important hearings regarding the Act and would appreciate it if you would advise me when any are scheduled.

Yours very truly,

RICE, HOPPNER & HEDLAND

Millard F. Ingraham

MFI/mcb
Enclosures

A M E N D M E N T

Offered in the HOUSE By the Commerce Committee

TO: HOUSE BILL NO. 124

Page 1, line 6:

After "fault" add "; and amending Rule 49(c) of the Alaska Supreme Court's Rules of Civil Procedure"

Page 2, line 16:

Add a new section to read:

"Sec. 3. AS 09.17.020 of sec. 2 of this Act amends Rule 49(c) of the Alaska Supreme Court's Rules of Civil Procedure by requiring the trial court to instruct the jury to give answers to special interrogatories in a tort action involving contributory fault."

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR
POUCH K – STATE CAPITOL
JUNEAU 99811

February 14, 1977

The Honorable Steve Cowper
Chairman
House Finance Committee
Tenth State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Fred Brown
Chairman
Labor and Management Committee
Tenth State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 124

Dear Representatives Cowper and Brown:

The following are comments on behalf of the Attorney General's Office on the referenced bill.

The primary effect of the bill is to make a matter of statute the doctrine of "pure" comparative negligence established by the Alaska Supreme Court in Kaatz v. State, 540 P.2d 1037 (Alaska 1975). The bill would appear to achieve its purpose in this regard.

There does appear to be at least one difficulty with the bill. In order to make this apparent difficulty clear, some background discussion is necessary. The Uniform Contribution Among Joint Tortfeasors Act has been enacted into statute in Alaska at AS 09.16.010 - .060. Prior to comparative negligence becoming the law of Alaska, a claimant in a tort action could recover a judgment rendered against joint tortfeasors from any one or a combination of the joint tortfeasors who had done him injury. Additionally, the Uniform Contribution Among Joint Tortfeasors Act provided

> In determining the pro rata shares of tortfeasors in the entire liability their relative degrees of fault shall not be considered. AS 09.16.020(1).

The bill in Section 1 proposes an amendment to that provision as follows:

> In determining the pro rata shares of tortfeasors in the entire liability their relative degress of fault shall be the basis for allocation [NOT BE CONSIDERED].

The draft of the Uniform Comparative Fault Act, largely relied on by the drafters of the bill, has an additional section not incorporated into the bill which reads as follows:

> Section 3. Contribution rights among multiple defendants are determined in accordance with the percentage of fault of each defendant, as found by the trier of fact. The court shall enter judgment on the basis of those rights and findings made under Section 2. If a judgment against a party cannot be collected within [one year] after the judgment becomes final, the responsibility for the amount involved is distributed among the other parties in proportion to their relative fault.

This section has two effects: (1) it makes it clear that contribution among joint tortfeasors is to be determined on the basis of their relative degrees of fault (see AS 09.16.020(1), set forth above), and (2) it provides that if one tortfeasor cannot be made to pay his share of the judgment because he is uninsured or otherwise insolvent, then all parties, including the claimant, shall bear the burden proportionate to their relative degrees of fault. The second effect of the proposed section is to change the common law, in that, if part of a judgment is uncollectible, the amount that the claimant is to receive will be diminished proportionate to his own negligence as determined by the trier of fact.

The bill does not include this section of the draft Uniform Comparative Fault Act, apparently with the intent not to diminish the claimant's recovery proportionate to his relative degree of fault in the situation where part of the judgment is uncollectible. For example, assume that a court determines the injuries to a claimant to be $100,000, and that the plaintiff and the two joint tortfeasors are each 33% liable. If both tortfeasors are solvent, the claimant would collect $33,000 from each of them. However, if one of the two joint tortfeasors is insolvent, then under the section of the draft Uniform Comparative Fault Act set forth above (which the bill does not incorporate), the claimant and the solvent tortfeasor would have to share the loss proportionate to their relative degrees of fault, and

the claimant would collect $50,000 of his judgment ($33,000 from the solvent joint tortfeasor, plus an additional $17,000 from that same joint tortfeasor, which represents one-half of the uncollectible part of the judgment). On the other hand, the apparent intent of the bill is to allow the claimant to collect the entire judgment to which he would be otherwise entitled. Under the fact situation above, it is the apparent intent of the drafters of the bill to allow the claimant to collect all $66,000 from the single solvent joint tortfeasor.

There is some question, however, as to whether the bill in fact achieves its purpose. Accordingly, it is suggested that an additional section be added to the bill, incorporating Section 3 of the draft Uniform Comparative Fault Act, set forth above, modified as follows:

> Contribution rights among multiple tortfeasors [defendants] are determined in accordance with the percentage of fault of each tortfeasor [defendant], as found by the trier of fact. The court shall enter judgment on the basis of those rights and findings made under Section 2. If a judgment against a party cannot be collected within [one year] after the judgment becomes final, the responsibility for the amount involved is distributed among the other parties in proportion to their relative fault.

The purpose of this proposed change is explained in Millard F. Ingraham's December 30, 1976, letter to Representative Cowper. I repeat the applicable portion of Mr. Ingraham's letter below:

> I have everwhere changed 'plaintiff' to 'claimant' and 'defendant' to 'tortfeasor'. The reason for this is that often a tort claimant may be cast in the role of a counterclaiming defendant and a tortfeasor may be cast in the role of a plaintiff.

If, on the other hand, the bill is to be drafted so as not to require that the claimant share in any diminution of the judgment proportionate to his relative fault, then the third sentence of Section 3 of the draft Uniform Comparative Fault Act should be modified as follows:

> All tortfeasors liable to claimant are jointly and severally liable for all damages to which claimant is entitled.

This proposed change was also suggested in Mr. Ingraham's letter to you. Set forth below are the applicable comments in that letter:

> The main argument that I have with the proposed Act is in section 3. Under section 3, the common law doctrine of joint and several liability of joint tort feasors is abolished and all parties, including the injured party, must share proportionately in the insolvency of an uninsured or otherwise insolvent tort feasor. This is not the law in other jurisdictions that have considered the problem. See 57 Am. Jur. 2nd, Negligence §435, especially notes 12, 13, and 14, a copy of which I am enclosing. The whole theory of comparative negligence is that a tort victim should be penalized in recovery from a tort feasor in an amount equal to his contribution to his own injuries. It would be contrary to the humanitarian spirit of the doctrine to further penalize the tort victim for the insolvency of one or more tort feasors. Furthermore, the proposed Act, in practice, would severely complicate litigation. I can imagine in every action filed under the proposed Act, that defendants would attempt to join every potential insolvent defendant around in an effort to decrease their own liability. I have had many cases where potential defendants are not joined because they are uninsured or otherwise insolvent and to join them under such circumstances would merely complicate the litigation. Defendants in such actions have not joined them either because, under the rule of joint and several liability, they know that they could not collect contribution from them. But if there is no joint and several liability, there would be very good reason for defendants to join insolvent defendants in an effort to reduce their own liability to the plaintiff.

Again, it is possible that the bill in its present form does not create the problem discussed above; however, Section 3 of the draft Uniform Comparative Fault Act, with the changes suggested above, does make the intent behind the legislation clearer. Section 3 also, in the second sentence,

specifies that the court shall as part of its judgment apportion damages. This sentence has the effect of dispelling any doubt as to the court's affirmative obligation to apportion at the time the initial judgment is entered.

If I can provide further assistance to the committee, please do not hesitate to contact me.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: William T. Council
Assistant Attorney General

WTC:chp

cc: Hon. Terry Gardiner, Chairman
House Judiciary Committee

John George
Risk Management
Dept. of Administration

HB
148

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

February 9, 1977

Hon. Terry Gardiner, Chairman
House Judiciary Committee
Tenth State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 43; HB 148

Dear Representative Gardiner:

The following are comments on behalf of the Attorney General's Office on the referenced bill.

1. As a general rule the Attorney General's Office will be in court, even on small claims matters should this bill pass, on the request of the judge. We do not foresee a major impact on the Attorney General's Office, either financially or in terms of the time required to cover matters that may be brought in the future as small claims.

2. It appears unlikely that monetary claims against the State of a contractual nature can be brought as small claims. AS 44.77 and the Administrative Procedures Act in conjunction with Appellate Rule 45 both require that claims of this type first be processed administratively, with the right of appeal being from the administrative determination to the superior court.

3. The court rules have worked substantial changes in the statutory small claims procedure. AS 22.15.040 states that the court "shall hear" the matter as a small claim unless there is an "important or unusual" rule of law involved, whereas the rule provides that the small claims procedure shall be followed when all parties elect, or there are "important or difficult questions of law or fact." The Attorney General's Office supports the rule in its present form.

4. The bill provides for service as usual on the Attorney General's Office. The Attorney General's Office strongly supports this provision of the bill. Please note that there is a typographical error in the bill: The reference in section 3 to Civil Rule 4(c)(7) and (8) should

refer to Civil Rule 4(d) (7) and (8).

5. Civil Rule 12(a) presently grants to the State 40 days within which to respond to a complaint. District Court Rule 13, which sets forth small claims procedure, allows 20 days. Since at present the small claims procedure does not apply to claims against the State, there is no provision in the small claims rules allowing 40 days to the State to answer a complaint. There are very sound reasons for allowing the State 40 days to answer, and the Attorney General's Office advocates continuation of the present allowance in the rules. The Attorney General's Office proposes that the bill incorporate the following additional provision:

> District Court Civil Rule 13(a) is amended to read: The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim within 40 days after the service upon the attorney general of the pleading in which the claim is asserted.

I am sure you are aware also of HB 148, which proposes to amend AS 22.15.040 so as to increase the jurisdictional amount for small claims from $1,000 to $2,000. The same comments above apply to this bill as well.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: William T. Council
Assistant Attorney General

WTC:chp

HB

174

Should require person go before D.A first and if refused then may go to the G. grand jury.

Introduced: 2/4/77
Referred: Judiciary

IN THE HOUSE BY PARR AND DANKWORTH

HOUSE BILL NO. 174

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the right of persons to bring criminal accusations to the attention of the grand jury; and changing Rule 6, Rules of Criminal Procedure."

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

* Section 1. AS 12.40 is amended by adding a new section to read:

Sec. 12.40.045. ACCESS TO GRAND JURY. (a) If a person knows or has reason to believe that a ~~crime~~ felony has been committed which is triable by the court, he may present a request in writing to the foreman of the grand jury that a meeting of all grand jurors be called to hear his evidence. The grand jury ~~shall~~ may investigate the evidence presented and ~~the~~ a prosecuting attorney shall be in attendance to review the evidence and advise the grand jury on all matters necessary to properly investigate any crime disclosed.

specify the manner of bringing this to attention.

(b) A person who wilfully interferes with a person's right of access to the grand jury under this section is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both.

delete

* Sec. 2. Section 1 of this Act has the effect of changing Rule 6, Rules of Criminal Procedure, by providing for presentation of evidence to the grand jury by persons other than the prosecuting attorney or another grand juror.

line 13 or ~~acknowledge~~ of public officials misfeasance

4/25/17

HB 174

D. Hickey
sorry Weeks

against the bill →

read instructions of pattern grand jury
used by Judge Stewart

intrude upon grand jury

Larry Weeks D.A. Juneau.

layman in grand jury pollutes grand jury
process.

~~problem~~ problem w/ section (b) for D.A. obligation
to keep people from taking
frivolous actions to the grand jury.

Dankworth — support of the bill

4/25/77

HB 174

This bill encourages use of the grand ~~jury~~ jury in frivolous matters.

House Judiciary
April 25, 1977

The meeting was called to order at 3:25 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Eliason, Rudd and Brown. Miles came late. Mr. Specking is no longer a member of the Judiciary Committee.

HB 174 Right of persons to bring criminal accusations to the attention of the grand jury. HB 174

Dan Hickey from the Criminal Division of the A.G.'s office was here to testify. He indicated his feeling that the access to the grand jury on the part of the citizens in Alaska is adequate. He indicated that the problem with this bill is that it would encourage people to go directly to the grand jury... it is felt that this is not necessary; and such public access could cause for several ambiguous relationships. Hickey indicated a further problem with the bill in that it doesn't explain how a person would have access to the grand jury. Hickey feels that person to person contact with a grand jury could lead to all sorts of problems.If public access to the grand jury is going to be approved, Hickey feels that it should be very specific.

Larry Weeks, District Attorney, also testified in oppostion to the bil He expecially objects to section (b).

Mr. Dankworth, who is a cosponsor for this bill, spoke about it. He feels that a major complaint of the public is the lack of input that they have. He feels that this bill would open a door for people who would like to appear before the grand jury.(Rather than being referred from policeman to D.A. to attorney, etc., etc.) Dankworth feels that if the D.A. doesn't want to take the case before the grand jury, the individual is out of luck.

Fred Brown mentioned some ideas that he would propose as amendments when the committee got around to marking up the bill.

This bill will be considered again at a later date.

HB 405 Providing for the qualification of district judges HB 405

Fred Brown spoke regarding this bill for which he is a sponsor. He explained what the bill would do.

Art Snowden from the Court System was here to testify in opposition to the bill. The court system feels that the qualifications of district court judges should be increased..Apparently this bill originated as a result of a magistrate in Brown's district who probably would be qualified to serve as a district court judge. Although this may be true of this particular magistrate, it is

probably not true of all magistrates. In light of the fact that the court system is trying to improve the judiciary, they feel that this bill would be a step in the wrong direction in that it would be a lessening of the qualifications.

In response to a question by Rudd, Snowden indicated that the present requirements for a magistrate are that he be picked by the presiding judge; the present requirements for a district court judge are that he be a member of the bar.

Brown moved that HB 405 be moved out of committee. The vote was 3-3 so the motion failed on a tie vote. The bill will remain in committee.

The meeting was adjourned at 4:30 p.m.

HB
177

Committee files

House Judiciary

These signatures were gathered at the International Women's Year Conference held in Anchorage May 6 - 8, 1977. As such, they represent the expression of women from all parts of Alaska, from diverse social, economic and cultural backgrounds.

For further information, contact Janet Bradley at 465-3566.

JB
5/9/79

We, the undersigned, urge your support of House Bill 177, relating to the right of a victim of a violent crime to appear and comment at the sentencing of the defendant convicted of the crime. Many women, in particular, have been denied this opportunity, resulting in their dismay and dissatisfaction with the "wrist-slap" sentences sometimes given rapists and batterers in the victim's absence.

Name	Address
[illegible]	1955 Glacier St. [illegible] 99504
[illegible]	1335 Hyder St. #4 Anch, AK 99504
[illegible]	1227 Cordova #A Anch. AK 99501
Mary B. Woodhead	2985 Glacier St. Anchorage AK 99504
T. Steele Stewart	Box 1072 Wrangell 99929
Linda Font	4208 E 3rd Ave Anch. AK 99504
Perry Rader	28 Creek St. Ketchikan Alaska
Jean Ackerman	1/4 mile Regen Rd. Fbks AK 99701
Cleo Peters	Box 81086 College AK 99708
Lois David	RR 1 Box 4235 Juneau AK 99803

Copies in all Com files HB 177

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 25, 1977

Mr. John Sund
Administrative Assistant
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 177

Dear John:

I have your letter of February 18. The matter of victims appearing at sentencing proceedings was discussed at the last Conference of Alaska Judges, and although I don't have the minutes of that conference at hand, it is my recollection that the judges did vote in favor of a resolution which suggested that the sentencing judge should, as a general rule through the Division of Corrections, make some contact with the victim of not only violent crimes, but also property offenses when it seemed appropriate, to advise the victim of the time set for sentencing and the fact that victim could appear and offer comments if he wished. That resolution was also directed to efforts to get the investigating police officers to appear at the sentencing proceedings. The sense of the discussion at the Judge's Conference was that the extent of comments by either the investigative officers or the victims would be pretty much at the discretion of the trial judge, and our thought, generally, was to get these people at the sentencing proceeding so that they have an idea what happens to the offender and why as well as to offer comments if asked by the judge.

I don't think tnat there would be any strong opposition to HB 177 on the part of the court system. I think many of the trial judges are sensitive to the need to have some way not only for the victim to express his or her thoughts on the offense and perhaps on an appropriate sentence, but also as a matter of communication to allow those persons to have some direct knowledge of the action taken by the court.

Concerning the provision about asking for recommendations as to the sentence, I do have some personal reservations about that. In those cases in which the victim, probably with some justification, has strong feelings about what should happen to the offender, I believe that asking for recommendations could well contribute to turning the sentencing proceedings into a shouting match without being of any real benefit to the judge. As a practical matter, I do not ask either defense counsel or the District Attorney for any specific recommendation on a sentence. I am primarily interested in information about the defendant and the offense and I have found the Numbers Game played by counsel for either side to be of no particular benefit to the court.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

Committee files

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Cara Peters	Box 81086 College AK 99708
Erin David	RR 1 Box 4225 Juneau AK 99803

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Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

TERRY GARDINER
STATE REPRESENTATIVE
POUCH V
JUNEAU
99811

BOX 1092
KETCHIKAN
99901

Alaska State Legislature

file HB177

February 18, 1977

Judge Tom Schultz
Superior Court
Fourth Floor State Office Bldg.
Ketchikan, Alaska 99901

Dear Judge Schultz:

Enclosed is a copy of HB 177 relating to the right of a victim of a violent crime to appear at the sentencing of the defendant convicted of the crime. I would appreciate your comment on the bill and whether you feel there is any deep opposition within the court system to granting the victim that right.

I have also heard some rumors floating around that the judges, at their latest conference, passed out a resolution relating to the rights of victims to appear at sentencing and also in an attempt to encourage the police officers to also attend the sentencing hearing period. If there is a resolution around, I would appreciate it if you could either send a copy to me or send me a note as to where I could obtain a copy.

Sincerely,

John Sund (by Jsm)

John Sund
Administrative Assistant
House Judiciary Committee

HB
194

HB194

February 9, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the definition of "delinquent minor". The bill was requested by the Department of Health and Social Services in response to the recent Alaska Supreme Court opinion, In the Matter of L.A.M., 547 P.2d 827 (Alaska 1976). The L.A.M. decision permits a "child in need of supervision" to be classified and institutionalized as a "delinquent" if the child is found to be in contempt of court. The attached bill reverses the effect of that decision for future cases.

Under AS 47.10.010(1) and 47.10.290(2), delinquent children are those who violate laws. Under AS 47.10.-010(2), (3) and (6), and 47.10.290(7) children in need of supervision are those whose behavior would not constitute a criminal offense if they were adults, e.g., runaways, truants, children beyond the control of their parents or guardians. The runaway child in the L.A.M. case violated a court order which prohibited her from leaving a foster home without contacting a responsible adult, i.e., she ran away again. The child was adjudicated a delinquent because her failure to abide by the court order would be characterized as the "crime" of contempt under AS 09.50.010(5) were she an adult.

The Department of Health and Social Services is strongly opposed to the effect of the L.A.M. decision because it believes that children in need of supervision, including those who have violated a court order to cease the behavior which has resulted in such a

classification, are in a different category from children who have violated a criminal statute and should receive different treatment. The classification and institutionalization as delinquents of children whose conduct would not be a crime were they adults is viewed by the department as a serious step backwards in providing meaningful treatment for these children.

This bill does not undertake the "legislative overhaul" in the child-in-need-of-supervision area requested by the state Supreme Court in the L.A.M. decision, 547 P.2d at 836, because such an overhaul has been made by the Children's Law Revision Task Force in the legislation which it plans to introduce during this legislative session. The present bill addresses the single issue of classifying a child as a delinquent on the ground of a finding of contempt of court, an issue not clearly covered by current statutes or the Task Force's proposed legislation.

Sincerely,

Jay S. Hammond
Governor

Alaska State Legislature
House of Representatives

POUCH V
JUNEAU, ALASKA 99811

My file HB194

MEMORANDUM

TO: Rep. Terry Gardiner
Rep. Bill Miles
Rep. Fred Brown
Rep. Lisa Rudd
Rep. Ed Dankworth
Rep. Dick Eliason
Rep. Keith Specking

FROM: Rep. Hugh Malone HM

DATE: 15 March 1977

I would appreciate your reviewing the attached material and considering Judge Hanson's opinion before taking action on HB 194.

Thank you.

MAR 1 1 1977

Superior Court

State of Alaska

Chambers of
JAMES A. HANSON, Judge

BOX 3891
KENAI, ALASKA
99611

303 K STREET
ANCHORAGE, ALASKA
99501

March 8, 1977

Hugh Malone
State Representative
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Hugh:

Fully realizing that you do not have time now to read the enclosed material I am simply asking that you do what you can to hold HB 194 over to next year so that its ramifications can be studied. This bill is designed to overcome the Supreme Court's opinion in LAM vs State, 547 P2d 827 (Alaska 1976) a copy of which is enclosed. Also enclosed is a copy of the Superior Court decision which led to the Supreme Court opinion.

About a year ago I had a Kenai girl very similar to LAM. I'm satisfied that she'd now be either dead or better off dead if I had no legal tool with which to control her I don't like locking up kids. Sometimes it is necessary.

On another subject the Department of Health and Social Services has been totally mute regarding the local jail situation. No reply to the city or the court system. They return neither letters or phone calls.

Very truly yours,

JAMES A. HANSON, Judge

JAH: rf
Enclosures

In the Matter of L. A. M., Appellant,
v.
STATE of Alaska, Appellee.
No. 2221.

Supreme Court of Alaska.
March 15, 1976.

The Superior Court, Third Judicial District, Anchorage, James K. Singleton, J., entered order declaring minor a delinquent child for her willful failure to comply with certain court orders made after prior adjudication that she was child in need of supervision, and she appealed. The Supreme Court, Erwin, J., held that evidence supported conclusion that minor, who was chronic runaway, would not be distinguishable in sophistication or exposure to criminal activity from average child in population at state youth center, and thus, placement of such minor in state youth center was not precluded; that superior court had authority to enforce order entered against child in need of supervision, which order provided that child was not to remain away from children's home in which she had been placed without permission of appropriate adult authorities of the home; and that failure of minor to abide by court orders regarding her supervision constituted willful criminal contempt of court's authority, and she was, therefore, properly declared delinquent and subject to those sanctions available for correction of delinquent minor's behavior.

Affirmed.

Boochever, J., concurred and filed opinion in which Rabinowitz, C. J., joined.

Rabinowitz, C. J., concurred and filed opinion.

1. Contempt ⇐20

Before party may be held in criminal or civil contempt for failure to abide by court order, certain elements must be established: existence of valid order directing alleged contemnor to do or refrain from doing something and court's jurisdiction to enter that order; contemnor's notice of order within sufficient time to comply with it; and in most cases, contemnor's ability to comply with order; and contemnor's willful failure to comply with order.

2. Contempt ⇐2

Distinction between criminal and civil contempt is generally phrased in terms of whether character and purpose of contempt is "remedial" or "punitive."

3. Contempt ⇐3, 4

Where contempt power is invoked to punish alleged contemnor for "past, willful, flouting of the court's authority," contempt is criminal, but where contempt proceeding is instituted to "coerce future conduct," contempt is civil. AS 09.50.010(5), 09.50.050.

4. Contempt ⇐3

Contempt order issued against minor for minor's willful failure to comply with certain court orders made after adjudication that minor was child in need of supervision constituted criminal contempt. AS 09.50.010(5).

5. Infants ⇐16.5

Proceedings against children alleged to be in need of supervision are in substance and effect custody disputes where contestants are parent and child, and parent appeals to court to vindicate and enforce his custody rights in child against that child.

6. Adoption ⇐7.2(1)
Names ⇐9
Parent and Child ⇐2(1), 4, 5(1), 8

The following are "parental rights" protected to varying degrees by constitution: physical possession of child, which, in case of custodial parent, includes day-to-day care and companionship of child; right to discipline child, which includes right to inculcate in child parent's moral and ethical standards; right to control and manage minor child's earnings; right to control and manage minor child's property; right to be supported by adult child; right

to have child bear parent's name; and right to prevent adoption of child without parents' consent.

See publication Words and Phrases for other judicial constructions and definitions.

7. Adoption ⇐7.2(1)
Names ⇐9
Parent and Child ⇐2(17)

Of the so-called residual parental rights, those that remain after custody is placed in another include right to consent to adoption and to withhold consent to prevent adoption, right to visitation and right to have child bear parents' name.

8. Parent and Child ⇐2(1)

Like all legal rights, parent's right to custody of his child is not absolute and may be lost through divorce, by conduct depriving child of necessities of life, by abandonment, by child's emancipation, or, subject to constitutional limitations, where welfare of child requires limitation or termination of parental rights. AS 09.55.205, 25.20.010, 47.10.010(a)(4, 5), 47.10.080(c), 47.10.290(3).

9. Infants ⇐13

State has legitimate interest in protecting children from venereal disease, from exposure to use of dangerous and illicit drugs, from attempted rape, and from physical injury.

10. Infants ⇐16.1

Purpose of statute creating classification of child in need of supervision is reintegration of child into her family and resumption of parental custody, including parental control. AS 47.10.010(a)(2), 47.10.290.

11. Infants ⇐16.8

Evidence in delinquency hearings supported conclusion that minor, who was chronic runaway, would not be distinguishable in sophistication or exposure to criminal activity from average child in population at state youth center, and thus, placement of such minor in state youth center was not precluded.

12. Infants ⇐16.4

Whether child is characterized as delinquent child, child in need of supervision, dependent child, or merely child whose custody is disputed in domestic relations proceeding, court has authority, upon extending all procedural safeguards, to make orders affecting her custody. Const. art. 4, § 1.

13. Contempt ⇐33

While court may have limitations on its power to act, there are only due process limitations on its authority to compel enforcement of its orders.

14. Infants ⇐16.12

Superior court had authority to enforce order entered against child in need of supervision, which order provided that child was not to remain away from children's home in which he had been placed without permission of appropriate adult authorities of the home.

15. Infants ⇐16.2

Failure of minor to abide by court orders regarding her supervision, following adjudication that such minor was child in need of supervision, constituted willful criminal contempt of court's authority, and she was, therefore, properly declared delinquent and subject to those sanctions available for correction of delinquent minor's behavior. AS 09.50.010, 47.10.010(a) (2, 3, 6), 47.10.080(j), 47.10.290.

Herbert D. Soll, Public Defender, Phillip P. Weidner, Asst. Public Defender, and R. Collin Middleton Anchorage, Alaska, for appellant.

Avrum M. Gross, Atty. Gen., Juneau and Larry R. Weeks, Asst. Atty. Gen., Anchorage, for appellee.

Before RABINOWITZ, Chief Justice, and CONNOR, ERWIN, BOOCHEVER and BURKE, Justices.

OPINION

ERWIN, Justice.

L.A.M. seeks review of the superior court's order dated July 26, 1973, declaring her a delinquent[1] child for violation of AS 09.50.010,[2] i.e., willful failure to comply with certain court orders made after a prior adjudication that she was a child in need of supervision.[3]

In order to understand L.A.M.'s arguments and place her situation in context, it will be necessary to set out her history at some length.

L.A.M. was born in Canada in 1958 and was adopted by the M's shortly thereafter. The M.'s soon were divorced and Mrs. M. moved with L.A.M. to Alaska. In 1971 Mrs. M. married Mr. C. and retired from work, intending to spend more time with L.A.M. Difficulties arose almost immediately with L.A.M. neglecting to return home after staying with friends.

L.A.M. began a consistent pattern of running away in the Spring and Summer of 1972. During this period two petitions were filed seeking to have her declared a child in need of supervision, but in both cases the petitions were dismissed on stipulation and the matter handled informally.[4] On November 2, 1972, a new petition was filed. At the hearing L.A.M. admitted the allegations of the petition and was declared a child in need of supervision. She was ordered detained at the McLaughlin Youth Center pending adjudication.

On December 12, 1972, the disposition hearing was continued and L.A.M. was released to her parents. One week later the court was informed that she had run away. A pick-up order was issued and the minor was brought back to court on December 27, 1972, at which time she was detained pending disposition. The disposition hearing was finally held on January 11, 1973. Upon listening to testimony, the Master for the Family Court filed his recommendation that the minor be "released to her parents." A superior court judge adopted the finding and executed a release.

On March 19, 1973, L.A.M. was brought back to court by an intake officer who in-

1. AS 47.10.010(a)(1) provides in relevant part:
   (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor (1) violates a law of the state, or an ordinance or regulation of a political subdivision of the state . . ..

2. AS 09.50.010 provides in relevant part:
   Acts or omissions constituting contempt. The following acts or omissions in respect to a court of justice or court proceedings are contempts of the authority of the court:
   . . . . .
   (5) disobedience of a lawful judgment, order, or process of the court . . ..

3. AS 47.10.290 provides in relevant part:
   In this chapter, unless the context otherwise requires,
   . . . . .
   (7) "child in need of supervision" is a minor whom the court determines is within the provisions of (AS 47.10.010(a)(2), (3), (4), and (6)). [Matter in parentheses supplied.]

   AS 47.10.010(a)(2), (3) and (6) respectively provide:
   [B]y reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian;
   [I]s habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others;
   . . . . .
   [A]ssociates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others . . ..

4. Children's Rule 4(d) provides:
   Informal Disposition. If the intake officer, after investigation, believes that in the best interest of the child the matter should be handled on an informal basis, he may thereafter refrain from filing a petition and shall thereafter on behalf of the court, counsel with the child and parents, guardian or custodian, and with their consent and cooperation establish such informal supervision or disposition of the child matter as the circumstances may require.

formed the court that she had "been a runaway almost constantly since the time the court released her." The intake officer then filed a petition with the court alleging that the minor was a "child in need of supervision" by virtue of having been truant from school in violation of AS 47.10.010(a)(3) and AS 14.30.010 (truancy).[5] At the hearing the court was informed that Mrs. C. had obtained a child psychiatrist who had met with the child and her mother, and together they had worked out some program of counseling. The parties agreed that L.A.M. would be placed in a foster home during a period of counseling and the judge accepted a stipulation to that effect. Having previously explained to L. A.M. that if she violated a court order she could be held in contempt of court and incarcerated, the judge informed the child that she was not to leave the foster home without contacting her psychiatrist, her social worker, or her mother. She agreed. The minor was released from McLaughlin on March 31, 1973, and placed in a foster home. She ran away on April 2, without notification, and was not apprehended until May 4.

A hearing was held on May 14, 1973, at which time L.A.M. was charged with contempt of court by the intake officer. Because of the uncertainty in this area, the trial court appointed the public defender to represent her. On May 17, 1973, the hearing resumed. The state argued that a child in need of supervision could not thereby be held in contempt of court and incarcerated, but that a child guilty of "criminal contempt" could on that basis be adjudicated a "delinquent child" and thereafter institutionalized. The State, therefore, moved to dismiss the petitions, alleging contempt of court and substituting a petition of alleged delinquency. The court denied the motion but permitted the State to file an amended petition alleging as a separate count an act of delinquency predicated upon "criminal contempt."

A petition alleging delinquency was filed on May 23, 1973, at which time a hearing was held. In responding to the petition L. A.M. denied the allegations and requested a trial. Pending trial, she was placed at the Alaska Children's Services receiving home. A written order was entered on June 8, 1973, specifically setting out the conditions under which L.A.M. would reside at the receiving home pending her adjudication hearing. Specifically, it provided that "[T]he child is not to remain away from the Anchorage Children's Christian Home overnight without the permission of the appropriate adult authorities of the home."

On July 26, 1973, an intake officer filed a petition for revocation of conditions of release pending L.A.M.'s adjudication hearing. In part, the petition stated that she had left the receiving home without permission on July 3, 1973, and remained away until July 24, 1973. A detention hearing was held on July 26th, and at the hearing L.A.M., through her counsel, admitted the allegations of the petition of alleged delinquency based on violation of a court order filed on May 23, 1973. L.A. M.'s counsel made it clear that the minor was only admitting the facts and reserving the right to litigate the legal consequences of those facts.

The court then proceeded to a consideration of the petition for revocation of conditions of release pending adjudication hearing filed on July 26, 1973. Upon admitting the allegations of this petition as well L.A.M. requested through her attorney that a disposition hearing be scheduled within thirty days.

5. AS 14.30.010 provides in relevant part: *When attendance compulsory.* (a) Every child between seven and 10 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

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tting out the

At the disposition hearing held on August 28, 1973, and on August 31, 1973, two experts testified on behalf of the minor and two testified on behalf of the State. The expert testimony pointed up the substantial differences of opinion both as to principle and policy that exists regarding runaways and their treatment. After considering all of the evidence, the court accepted the recommendation of the Division of Corrections and ordered the minor institutionalized, but deferred execution of the order for a period of sixty days to give L. A.M. one more opportunity to establish that she could be rehabilitated within the community. During the deferred period L.A.M. was assigned to Sheila Lankford of the Division of Corrections Probation Department.

On November 2, 1973, the superior court, on the request of Ms. Lankford, vacated the deferred order of institutionalization and placed the child on regular probation, having been advised that L.A.M. was functioning effectively within the community while living at home. On November 5, 1973, the minor ran away but returned of her own accord on November 7. Two days later she ran away again and remained away until December 5, 1973, when she was apprehended by the police. On December 6, 1973, Ms. Lankford petitioned to revoke the minor's probation. At the hearing on this matter held on December 18, the superior court granted the petition to revoke probation but reinstated it on new conditions in light of a request by Ms. Lankford that the minor not be institutionalized. It was agreed that the child would reside in the Alaska Children's Services Receiving Home.

On March 18, 1974, Ms. Lankford filed a further petition seeking revocation of probation. In it she alleged that on February 20, 1974, the minor ran away from the receiving home and remained away until March 16, 1974, when she was apprehended by the police. At the hearing on the petition, held on March 22, 1974, the court found the minor had violated the conditions of her probation and had run away from the receiving home. The court considered the minor's objections presented by her attorney and, after considering the evidence and the argument of the parties, directed that the minor be institutionalized.

L.A.M. seeks to have her adjudication of delinquency set aside on two grounds. She contends that both as a matter of statutory interpretation and constitutional law, a child in need of supervision may not be prosecuted for criminal contempt; or, in the alternative, if such a prosecution is allowable, such prosecution cannot result in incarceration. Upon discussing the nature of contempt in this case, each of these grounds will be dealt with in order.

[1] Before a party may be held in criminal or civil contempt for failure to abide by a court order, certain elements must be established: (1) the existence of a valid order directing the alleged contemnor to do or refrain from doing something and the court's jurisdiction to enter that order; (2) the contemnor's notice of the order within sufficient time to comply with it; and in most cases, (3) the contemnor's ability to comply with the order; and (4) the contemnor's willful failure to comply with the order.

[2] The distinction between criminal and civil contempt is generally phrased in terms of whether the character and purpose of the contempt is "remedial" or "punitive."

[3] In *Johansen v. State*[6] we used a balancing test in determining that the failure to pay child support was criminal rather than civil contempt. We did so because incarceration was imposed for a fixed period under AS 09.50.020[7] to punish a completed act rather than to coerce future con-

6. 491 P.2d 759 (Alaska 1971).

7. See n. 2, *supra*.

duct pursuant to AS 09.50.050.[8] Specifically, the court held that where the contempt power was invoked to punish the alleged contemnor for "past, willful, flouting of the court's authority" pursuant to AS 09.50.010(5) (cf. AS 09.50.020), contempt was criminal, but where the contempt proceeding was instituted to "coerce future conduct" pursuant to AS 09.50.050, the contempt is civil.

[4] Applying that distinction here, the contempt order issued by the court would obviously be classified as "criminal." Were L.A.M. an adult, her failure to abide by court orders would be characterized as a "crime" under AS 09.50.010(5). Hence, L.A.M. could properly be declared a delinquent under AS 47.10.010(a)(1) after a proceeding in the Children's Court.

L.A.M. grounds her constitutional argument in *Breese v. Smith*,[9] where this court ruled that the right to liberty set out in Art. I, Sec. 1, of the Alaska State Constitution[10] guarantees every Alaskan regardless of age ". . . total personal immunity from governmental control: the right to be let alone . . . ," which L.A.M. contends the supreme court qualified only to the extent that it ". . . must yield when [it] intrudes upon the freedom of others. . . ." Therefore, she continues, a citizen's right to liberty as enunciated in *Breese, supra*, (bolstered by the more recently enacted "right to privacy")[11] cannot be infringed by preventing her from doing anything that does not injure a specific definable victim. Consequently, L.A.M. concludes since her conduct, i.e. running away from home and foster home placement, did not injure anyone (except perhaps herself, which she contends has not been proved), it necessarily follows that it cannot constitutionally be interfered with by the State because there is no compelling state interest to justify such an interference.

L.A.M. assumes that the only interest to be protected by legislation in this area is that of the children. This is simply not the case. The parents' interest as well as the State's must be considered.[12]

[5–7] Proceedings against children alleged to be in need of supervision are in substance and effect custody disputes where the contestants are parent and child, and the parent appeals to the court to vindicate and enforce his custody rights in the child against that child.[13] Viewed in

8. AS 09.50.050 states in relevant part:
When the contempt consists of the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he has performed it.

9. 501 P.2d 159, 168–170 (Alaska 1972).

10. Art. I of the declaration of rights of the Alaska Constitution, § 1, provides:
Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

11. Alaska Constitution, Art. I, § 22, provides:
Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

12. The U. S. Supreme Court has on a number of occasions held that a parent's "right" to the custody and control of his child was constitutionally protected. *See Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965); *May v. Anderson*, 345 U.S. 528, 73 S.Ct. 840, 97 L.Ed. 1221 (1953); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1932).

13. While there is much discussion of parental rights in reported cases, few cases attempt to define those rights making discussion difficult. A careful review of the literature, including case law, treatise and law review, indicates that the following have

this light, the statutes creating the status "child in need of supervision" provide a judicial remedy and discourage resort to self-help and the attendant risk of violence.[14]

[8] Thus, before L.A.M. can sustain her case that the child in need of supervision procedure, including the invocation of the court's contempt power to enforce orders made pursuant to it, is an unconstitutional invasion of her liberty and privacy, she must first establish that her mother has no legally enforceable right to her custody and the State thus has no right to enforce such an order. We note at the outset, however, that there is more to the parent-child relationship than simple custody. It is love and trust and a responsibility toward each other which cannot be defined legally. It is impossible to discuss severing this relationship without considering the heartache and anguish of the parents who must ultimately live with themselves and the decision after the child reaches adulthood. Further, the consideration of such an issue must accept the limitations of the State to be a parent; good intentions are not adequate substitutes for the day-to-day relationship which we have come to accept as necessary to the growth of children into responsible adults. True, like all legal rights, a parent's right to the custody of his child is not absolute and may be lost through divorce,[15] by conduct depriving the child of the necessities of life,[16] by abandonment,[17] by the child's emancipation,[18] or, subject to constitutional limitations, where the welfare of the child requires a limitation or termination of parental rights.[19]

been listed as "parental rights" protected to varying degrees by the Constitution:

(1) Physical possession of the child which, in the case of a custodial parent includes the day-to-day care and companionship of the child. In the case of a non-custodial parent, possession is tantamount to the right to visitation.

(2) The right to discipline the child, which includes the right to inculcate in the child the parent's moral and ethical standards.

(3) The right to control and manage a minor child's earnings.

(4) The right to control and manage a minor child's property.

(5) The right to be supported by an adult child.

(6) The right to have the child bear the parent's name.

(7) The right to prevent an adoption of the child without the parents' consent.

Of these so called residual parental rights, those that remain after custody is placed in another include the right to consent to an adoption and to withhold consent to prevent an adoption, the right to visitation and the right to have the child bear the parents' name. See the discussion in Burt, Forcing Protection on Children and Their Parents, 69 Michigan 1259 (1971); Dobson, The Juvenile Court and Parental Rights, 4 Family Law Quarterly 393 (1970); Young, The Problem of Neglect: The Legal Aspects, 43 Journal of Family Law 29 (1964); Note, Child Neglect: Due Process for the Parent, 70 Col.L.Rev. 465 (1970).

14. By withdrawing court assistance (and police assistance) from embattled parents, the state is not inducing compromise but may encourage violence, since parents have the right under Alaska law to physically control their children. See AS 11.15.110(1) as interpreted in *State v. England*, 220 Or. 395, 349 P.2d 668 (1960), and compare the civil liability of parents for disciplining their children which is discussed in *Hebel v. Hebel*, 435 P.2d 8, 14-15 (Alaska 1967).

15. AS 09.55.205 gives a court in a divorce action the right to provide for the custody of the children.

16. See AS 47.10.010(a)(5) which, when read in conjunction with AS 47.10.080(c) and AS 47.10.290(3), permits the state to take custody of a child who "lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian."

17. See AS 47.10.010(a)(4), which authorizes the state to take custody of a child who has been abandoned.

18. A child is emancipated as a matter of law when he or she reaches the age of majority which in Alaska is 19 years of age; AS 25.20.010. *See R.L.R. v. State*, 487 P.2d 27 (Alaska 1971).

19. *Turner v. Pannick*, 540 P.2d 1051, (Op. No. 1119, 1975); *In the Matter of the Adoption of K. S.*, 543 P.2d 1191, (Op.No.1219, 1975).

L.A.M. was given an opportunity to show any of the foregoing as a defense to a finding that she was a "child in need of supervision" or, subsequent thereto, to a finding that she had committed criminal contempt of court and was therefore delinquent by violating orders regarding her placement; but she failed to do so.

Runaway children of L.A.M.'s age are generally incapable of providing for or protecting themselves. As a result, police spend a substantial amount of time protecting these youths from those who would prey upon them, as well as protecting the community from those who are ultimately driven to criminal activity to provide themselves with the necessities of life.

Various other social agencies also expend considerable efforts attempting to protect and shelter runaways in an effort to provide both an alternative to criminal activities and counseling in lieu of that they received from their parents. Without question these children's matters are of broad public interest and concern. They go to all aspects of the physical and mental well being of such children.[20]

The family, school, social agency and police resources allocated to aid the runaway are enormous. In this case, the child had continuing aid and support of (1) her mother and step-father, (2) a private psychiatrist hired by her mother, (3) counseling with social workers in Division of Family and Children's Services, (4) probation officers in Division of Corrections, (5) school counselors, (6) psychologists and psychiatrists from Langdon Clinic, (7) Alaska Youth Advocates, (8) group home counselors, (9) her court-appointed attorney, and (10) the court. To assert that the State has no interest in this child is to deny that the function of government is to protect its citizens. All of this presupposes the heartache and anguish of the parents, who in the first instance have been unable to deal with this problem but who must also live with the solution.

This court has previously found that there is sufficient State interest to justify restrictive measures on much less substantial grounds.[21] Further, this court has noted that distinct government interests with reference to children may justify legislation that could not properly be applied to adults.[22]

[9] The State has a legitimate interest in protecting children from venereal disease, from exposure to the use of dangerous and illicit drugs, from attempted rape, and from physical injury, all of which occurred in this case. Doubtless the State will never be entirely successful in its efforts. It does, however, have the right and obligation to *try* to protect its young people from such conditions.[23] The test set out by this court in *Ravin v. State*,[24] is whether the means chosen by the State are closely and substantially related to an appropriate government interest. Clearly they are here.

[10] While it may be argued that the necessary "supervision" contemplated by the statute is simply the furnishing of food, clothing, shelter and schooling in lieu of that which would otherwise have been provided by a parent, this argument begs the question, for the purpose of the supervision or treatment contemplated by the creation of the child in need of supervision and its predecessor non-criminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control (cf. AS 47.10.-

20. *In Re G.M.B.*, 483 P.2d 1006 (Alaska 1971); *Wagstaff v. Superior Court*, 535 P.2d 1220 (Alaska 1975).

21. *Kingery v. Chapple*, 504 P.2d 831 (Alaska 1972).

22. *Ravin v. State*, 537 P.2d 494 (Alaska 1975).

23. In the analogous equal protection argument concerning ". . . economics and social welfare, a State does not violate the Equal Protection Clause merely because the classification made by its laws are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491.

24. 537 P.2d 494 (Alaska 1975).

280). Thus, the State's efforts regarding the child are not directed solely at providing an alternate living situation (as they are in a true case of dependency) but at putting the child back in her own home. The reestablishment of her mother's custody and supervision over her and any foster placement is merely a means to that end, not an end in itself. Thus, by rejecting these efforts L.A.M. defeats, or at least slows, this reintegration process and thereby prejudices her mother's right to her custody and control, subjecting herself to the more severe sanction contemplated by AS 09.50.020.

We note that L.A.M.'s primary argument in this case is that as a child in need of supervision whose conduct from the inception of the case to the present has not changed, she may not be placed in a closed setting, i. e. one where the doors may be locked. However, the cases upon which L.A.M. relies proceed to a different point, namely that the child should not be placed in a state training school. In Colorado, California, Illinois and New York,[25] children in need of supervision can at the first instance be placed in juvenile halls or youth centers, i.e. places with locked doors, but cannot be placed at the state training school, i.e. maximum security institutions. The McLaughlin Youth Center in Anchorage is more the equivalent of a juvenile hall than it is a state training school. It should be noted that Alaska has contracts with Colorado and California to place Alaska delinquents who are too sophisticated for McLaughlin in the state institutions in those states. Thus L.A.M. is not to be placed at either the California or Colorado training schools; she is threatened with placement at the McLaughlin Youth Center.

[11] Substantial evidence was introduced during the many hearings of this case regarding the population at the McLaughlin Youth Center. Based upon that evidence, it is clear that the kind of children who are extremely agressive, and extremely hardened in delinquency, are not treated at McLaughlin Youth Center but are sent outside for placement at schools in Colorado and California under contract with the State of Alaska. While the population at McLaughlin is made up at the present time exclusively of "delinquents," the evidence introduced at trial convinces us that while delinquency in some form is a prerequisite to gaining admission to McLaughlin, it is not the real reason that the child is at McLaughlin. The overwhelming majority of delinquents with strong family ties are treated in the community. Those delinquents who end up at McLaughlin are by and large there for the same reason that L.A.M. may be there, namely an unwillingness to remain at home or a home substitute and heed parental or a custodian's regulations. Based upon the evidence, it appears that L.A.M. and other chronic runaways would not be distinguishable in sophistication, exposure to criminal activity, etc., from the average child in the population at McLaughlin and that therefore the reasoning of the cases cited by L.A.M. should not apply to Alaska.

[12–14] Whether we characterize L.A.M. as a delinquent child, a child in need of supervision, a dependent child, or merely a child whose custody is disputed in a domestic relations proceeding, the court has authority, upon extending all procedural safeguards, to make orders affecting her custody. It is argued, however, that this is a situation where the court has no power to enforce its order, and thus the court must release L.A.M. This view is contrary to the inherent power of the court to enforce its orders or decrees.[26] While the court

25. *In re Presley*, 47 Ill.2d 50, 264 N.E.2d 177 (1970); *Matter of Tomasita N.*, 30 N.Y.2d 927, 335 N.Y.S.2d 683, 287 N.E.2d 377 (1972); *C. v. Redlich*, 32 N.Y.2d 588, 300 N.E.2d 424 (1973); Cal.Welf. and Inst. Code, §§ 601, 730, 777 (West 1972).

26. Alaska Const. Art. IV, § 1, provides in part:

> The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature.

See also *Ex Parte Robinson*, 86 U.S. (19

may have limitations on its power to act, there are only due process limitations on its authority to compel enforcement of its orders. Hence, we reject the argument that the superior court lacked the authority to enforce specific orders against L.A.M. in this case.

[15] The lower court determined that L.A.M. would not abide by any orders it entered regarding her supervision under AS 47.10.080(j). This behavior constitutes willful criminal contempt of the court's authority; were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior. Certainly, conciliation should precede coercion; and if coercion is necessary, mild sanctions should first be tried before more severe sanctions are imposed. However, where mild sanctions fail, the court's orders must be enforced and severe sanctions should be imposed if necessary. In the instant case, all available sanctions, save institutionalization, were tried and found unsuccessful. Thus, the lower court determined that it had no choice but to order L.A.M. institutionalized.

In affirming this decision, we note that the trial judge was most innovative in fashioning a necessary remedy for a situation not covered by statute.[27] The very nature of the problem, however, calls for legislative overhaul of the statutes in this area, for the trial court's remedy is not easily modified to cover other situations where there is no statutory guidance.

BOOCHEVER, Justice, with whom RABINOWITZ, Chief Justice, joins, concurring.

I concur in the court's opinion based on the last three paragraphs thereof. I would not reach the other issues discussed in the opinion. Protection of parental rights to care, custody and supervision do not seem to me to be an appropriate rationale for placing a child in an institution. In my opinion, the court's efforts were devoted primarily to furthering the welfare of the child, a subject in which the state does have an interest.[1] There was ample testimony to indicate that L.A.M.'s conduct was harmful to her.[2]

Wall) 505, 510, 22 L.Ed. 205, 207 (1874); *In re Shortridge*, 99 Cal. 526, 528, 34 P. 227, 229 (1893); Frankfurter and Landis, Power of Congress over Procedure in Criminal Contempts in "Inferior" Federal Courts —A Study in Separation of Powers, 37 Harv. L.Rev. 1010, 1017–1022 (1924); Goldfarb, *The Contempt Power*, 37–40 (Columbia University Press 1963).

27. The trial judge was a model of patience and fairness in this extremely difficult case. Further, we are indebted to him for his scholarly memorandum opinion which aided in the preparation of this opinion.

1. The state's power to act in support of the welfare of children is exemplified by such statutory enactments as compulsory education (AS 14.30.010 et seq.); financial assistance for dependent children (AS 47.25.-310 et seq.); protective laws as to the employment of children (AS 23.10.325 et seq.); minimum age of consent for marriage (AS 25.05.171); prohibition of the use of alcohol and tobacco by minors and of the sale of either substance to minors (AS 04.15.-050 et seq. and AS 11.60.080); punishment for statutory rape (AS 11.15.120); contributing to the delinquency of a minor (AS 11.40.130); and for lewd or lascivious acts toward children (AS 11.15.134).
In *Anderson v. State*, 384 P.2d 669, 671 (Alaska 1963), this court stated that the purpose of the statute punishing acts which contribute to the delinquency of a minor is "to protect all children under the age of 18". In *Hanby v. State*, 479 P.2d 486, 498 (Alaska 1970), the court held that the state can enact statutes to protect the juveniles—to prevent as well as punish delinquency. In *Hanby*, the court found that material which was not so obscene as to be proscribed for the general population could be forbidden to minors. Children who were judged to be in a harmful environment were removed from their home in *In re [illegible] N.*, 533 P.2d 13 (Alaska 1975). The court determines child custody in divorce proceedings according to the welfare and best interest of the child. *Horton v. Horton*, 519 P.2d 1131, 1132 (Alaska 1974); *Nichols v. Nichols*, 516 P.2d 732, 734 (Alaska 1973); *Carle v. Carle*, 503 P.2d 1050, 1052 (Alaska 1972).

2. While a runaway, L.A.M. was truant from school; was allegedly the victim of a

On the basis of the record, I do not believe that we can conclude that police spend countless hours protecting the community from anti-social conduct of runaway children. Recent studies indicate that status offenders (such as runaways) are not a source of general harm to others as contrasted with children who have committed offenses which, if perpetrated by adults, would be crimes.[3] I concur in the opinion since I believe that the state has an interest in the welfare of children justifying the entry of appropriate orders. In cases involving status offenders, only after all else fails, should placement in a closed setting be justified. But under the facts of this case, the trial judge had no alternative.

RABINOWITZ, Justice (concurring).

Although I am in agreement with the court's disposition of this appeal, I think it appropriate to answer appellant's contention that our prior decisions precluded the superior court from institutionalizing L.A.M. This contention is grounded upon *In re E.M.D.*, 490 P.2d 658 (Alaska 1971), where we rejected the argument that under Alaska's statutes a minor who has been adjudicated a child in need of supervision may be institutionalized by the state. Upon analysis of the relevant statutes, we concluded that ". . . the legislature has authorized institutionalization only when the child is found to be a delinquent minor." [1] Thus, if the superior court in the case at bar had institutionalized L.A.M. because she had been adjudicated a child in need of supervision, such action would have been erroneous under *E.M.D.*

But here L.A.M.'s status was not merely that of a child in need of supervision; the scope of her future conduct had been limited by the superior court's order. By virtue of this order L.A.M. was, as the state argues, essentially on probation.[2] The majority notes that the superior court found that L.A.M. had violated the conditions of her probation by running away. The majority then observes that

> Were L.A.M. an adult, her failure to abide by court orders would be characterized as a 'crime' under AS 09.50.-010(5). Hence, L.A.M. could properly be declared a delinquent under AS 47.-10.010(1) after a proceeding in the Children's Court.

I thus conclude that what essentially transpired below was that the trial court found a violation of the conditions of probation which it imposed pursuant to its determination that L.A.M. was a child in need of supervision, and ordered L.A.M. incarcerated.[3] In my view, *E.M.D.* did not prohibit the superior court from ordering the institutionalization of L.A.M. in the circumstances of this case.

rape as reported in a call to the police; contracted gonorrhea; suffered an injured jaw and broken teeth from a fall, which injuries had not received medical attention.

3. Clarke, Stevens H., "Some Implications for North Carolina of Recent Research in Juvenile Delinquency," Journal of Research in Crime and Delinquency, January 1975.

1. *In re E.M.D.*, 490 P.2d 658, 659 (Alaska 1971). In E.M.D., after finding the minor to be a child in need of supervision, the trial court committed E.M.D. to the custody of the Department of Health and Welfare and directed the Department to place her in a correctional or detention facility.

2. AS 47.10.080(j) provides in part:
> If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:
>
> . . . . .
>
> (2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

3. *See* AS 47.10.080(b)(1).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

FAMILY COURT DIVISION

In the Matter of L.A.M.,	)
	)
A Minor Under the Age of Eighteen Years.	)
	)
	)
	)

CP No. 2992

ORDER DENYING MOTION TO VACATE FINDING OF DELINQUENCY

L.M. seeks review[1] of this court's order dated July 26, 1973, declaring her a delinquent[2] child for violation of AS 09.50.010,[3] i.e. wilful failure to comply with certain court orders made after a prior adjudication that she was a child in need of supervision.[4] L.M. contends that both as a matter of statutory interpretation

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1. Children's Rule 28(b) provides:

> Review upon application. For good cause shown the juvenile, his parents, guardian or custodian are entitled to review at any time upon application therefor.

2. AS Sec. 47.10.010(1) provides in relevant part:

> (a) Proceedings relating to a minor under eighteen years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor . . . (1) violates a law of the state, or an ordinance or regulation of a political subdivision of the state; . . .

3. AS Sec. 09.50.010 provides in relevant part:

> Acts or omissions constituting contempt. The following acts or omissions in respect to a court of justice or court proceeding are contempts of the authority of the court:
>
> . . . (5) Disobedience of a lawful judgment, order or process of the court; . . .

and constitutional law, a child in need of supervision may not be prosecuted for criminal contempt; or, in the alternative, if such a prosecution is allowable, such prosecution cannot result in a declaration of delinquency.

In order to understand L.M.'s arguments and place her situation in context, it will be necessary to set out a brief resume of her history.

L.M. was born in Alberta, Calgary, in Canada in 1958. The M.'s adopted her shortly after her birth. Mr. and Mrs. M. separated shortly thereafter, eventually divorcing. L.M. remained in Mrs. M.'s custody. Mrs. M. brought L.M. to Alaska and generally cared for her alone during the first twelve years of L.M.'s life. Until she was in the fifth grade, L.M. was left with babysitters

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3. (Cont'd)

AS Sec. 09.50.020 provides in relevant part:

> Penalty. A person who is guilty of contempt is punishable by a fine of not more than $300.00 or by imprisonment for not more than six months. However, when the contempt is one mentioned in (Sec. 10(5)) of this chapter, or in an action before a magistrate, the person is punishable by a fine of not more than $100.00 unless it appears that a right or remedy of a party to an action or proceeding was defeated or prejudiced by the contempt, in which case the penalty shall be as prescribed for contempts described in Secs. 10(1) and (2) of this chapter. (Matter in parentheses supplied.)

4. AS Sec. 47.10.290 provides in relevant part:

> In this chapter, unless the context otherwise requires, . . . (7) "child in need of supervision" is a minor whom the court determines is within the provisions of (AS Sec. 47.10.010(a)(2), (3), (4), and (6)). (Matter in parentheses supplied.)

AS Sec. 47.10.010(a)(2) provides:

> "by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian; . . .

while her mother worked. Thereafter, L.M. was permitted to be on her own. Mrs. M married Mr. C. in 1971 (over L.M.'s objection) and retired from work intending to spend more time with L.M. Difficulties arose almost immediately with L.M. neglecting to return home after staying with friends. L.M. began a consistent pattern of running away in the spring and summer of 1972. The first time the minor ran, she was located by her parents without police intervention and returned home. This was in May of 1972. She ran away again on June 19, 1972, at which time her parents again found her, this time with court and police assistance, and took her to the mental health clinic for counseling. L.M. rejected counseling and ran away again on July 3, 1972, at which time her parents sought the assistance of the Langdon Psychiatric Clinic. L.M. rejected any assistance from Langdon's Clinic, missing a number of appointments. Petitions were filed seeking to have L.M. declared a child in need of supervision on June 22, 1972, and July 3, 1972; but in each case, the petitions were dismissed on stipulation and the matter handled informally. 5/

Informal adjustment having been found unsuccessful, a further petition was filed on October 31, 1972, and amended on November 2, 1972. A hearing was held on November 2, 1972, at which time L.M. admitted the allegations of the petition and, upon the master's recommendation, was declared a child in need of supervision. She was ordered detained at the McLaughlin Youth Center pending adjudication. A

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4. (Cont'd)

Sec. 10(a)(3) provides:

> "is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others; . . ."

Sec. 10(a)(6) provides:

> "associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others; . . ."

background survey and analysis was prepared by probation officer Karl Ellis which, after setting out the minor's history, culminated in the following evaluation:

> The impression given by this minor is that she is not going to listen to any adult and is going to have her own way regardless. If she does not like what is being said, she tends to ignore the person saying it. It is likely that she has had her own way until her mother remarried and now does not want to be told what she has to do. No doubt, L.M. is well aware of the difficulty anyone will encounter in trying to do anything about her running away. The first time she encounters opposition to her wishes she will no doubt run again. It is not known whether she has used drugs but with her group of friends it may just be a matter of time. Continued resistance to counseling or seeing a psychiatrist can be expected. The mother's way of handling the problem has been ineffective. To tell this girl that she cannot run around with certain people will produce more rebellion and running away. It would be advisable for L.M. and her mother to attend counseling or to understand how to relate to one another. However, L.M. will not willingly attend any counseling session. Having this minor on probation may not produce any appreciable results. It is not likely that anything can be done about L.M.'s running away until she has violated a law and is declared delinquent.

On December 12, 1972, the disposition hearing was continued to obtain psychiatric and psychological evaluations that had been made of L.M. but not filed with the court. L.M. was released from detention to her parents pending the disposition. One week later, on November 19, 1972, the court was informed by Mr. Ellis that L.M. had the preceding Saturday ran away, then been picked up, and ran away again on Monday and was still missing. A pick-up order was issued. [6/] Dr. Wreggitt filed his report on December 18, 1972, in which he stated in part:

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5. Children's Rule 4 provides in relevant part:

> (d) Informal disposition. If the intake officer, after investigation, believes that in the best interest of the child the matter should be handled on an informal basis, he may thereafter refrain from filing a petition and shall thereafter on behalf of the court, counsel with the child and parents, guardian or custodian, and with their consent and cooperation establish such informal supervision or disposition of the child matter as the circumstances may require.

> L.M. was seen in psychiatric evaluation on July 17, 1972, at which time a diagnosis of depression reaction characterized negativism, apathy, hostility and runaways. Also of note, was a serious internal stress within the family in the form of severe impasse between L.M. and her mother.

Dr. Wreggitt went on to point out that family counseling had been suggested but rejected.

The minor was brought back to court on December 27, 1972, at which time she was detained pending dispositon. She had been picked up on December 26, 1972, by the police. A further report was filed by Dr. Wreggitt on January 10, 1973, at which time he repeated the material from his prior report, and added the following:

> In my repeat examination of L.M., she appeared equally as depressed as she had in July except that her hopelessness is markedly increased. In the period I spoke with her, I found no way to break through her hopelessness and no way to enlist her cooperation in a treatment effort. She stated that she wished to return home, although, she was still ambivalent about the problem's extent, and that she would run away from a foster or group home placement. She felt that she might consider the possibility of medication for her depression should this be offered, but felt rather hopeless about this. She denied suicidal ideation.
>
> There have been numerous contacts with both L.M. and her parents since the inception of our contact with them in July. . . . On the basis of those ongoing interviews and on the basis of the present examination, it would not appear that psychotherapy with the intact family at this time would be very productive.
>
> Although I have no direction from the court in this matter, whatsoever, it would appear that there are three alternatives possible for this child. The first of these is to continue with the home. Should she return to the home, the runaways are likely to continue to occur as there have been no significant structural change that I have been able to detect. If anything, there has been a worsening in L.M.'s condition and a hardening

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6. The Family Court has interpreted AS 47.10.030(c) to authorize the court to order the police to pick up runaways; cf. AS 47.10.140(e) and Children's Rule 5.

> of her defenses. The significant will struggle between the mother and child, which goes back for many years and has been exacerbated by the mother's recent marriage, still appears to be present. I am not sure of all the factors which enter into this will struggle.
>
> The second possibility would appear to be a placement in a group home. It is not clear whether there is either parental desire for such a placement or whether the girl would indeed stay in such a placement. Some possibilities would include, if age requirements are met, the Booth Memorial Home or the Jesse Lee Home.
>
> A third possibility would appear to be foster placement, but in view of Mr. Ellis' concern about the availability of an adequate placement here and the girl's serious problems, I would see this as having about the same chance of success as placement in the parental home. . . .

The disposition hearing was finally held on January 11, 1973, before the Honorable Wayne Ross, Master for the Family Court.

At the hearing Mr. Ellis testified under oath. He repeated most of the material in his written report and added that as a result of her continual running away from home, L.M. had missed a substantial part of her school year. Master Ross filed his recommendation that the minor be "released to her parents" with the Superior Court and Judge Butcher executed a release on January 11, 1973. No specific disposition pursuant to AS Sec. 47.10.080 was ever made. [7/]

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7. AS Sec. 47.10.080 provides in relevant part:

> (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent, or a child in need of supervision, or dependent minor.
>
> . . .
>
> (j) If the court finds that the minor is a child in need of supervision, it shall make any of the following orders of disposition for his supervision, care and rehabilitation:
>
> (1) any order which is authorized under (c) of this section; or
> (2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

On March 19, 1973, L.M. was brought back to court by Mr. Fredericks, the intake officer. He represented to the court that L.M. had "been a runaway almost

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7. (Cont'd)

AS Sec. 47.10.080(c) provides:

> (c) If the court finds that the minor is dependent, it shall:
>
> (1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;
>
> (2) order the minor released to his parents, guardian, or some other suitable person; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or
>
> (3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:
>
> (A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;
>
> (B) the child has been abandoned for a period of not less than six months by
>
> (i) both parents, or
>
> (ii) the surviving parent, or
>
> (iii) one parent if the other has been deprived of custody and visitation rights;
>
> (C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

constantly since the time the court released her." Further, he indicated that he had been contacted by Central Junior High School and informed that L.M. was constantly truant from school. He further indicated that Mrs. "C", L.M.'s mother, had contacted a new psychiatrist who had agreed to work with L.M. He therefore requested that L.M. be detained at McLaughlin Youth Center until the psychiatrist could meet with her. During the colloquy that followed, it appeared that Mr. Ross was under the impression that L.M. was on probation though, in fact, she was not. In any event, he ordered her detained for two days to permit a "further investigation."

On March 21, 1973, the intake officer filed a petition with the court alleging that the minor was a "child in need of supervision" by virtue of having been truant from school in violation of AS Sec. 47.10.010(3) and AS Sec. 14.30.010 (Truancy). 8/

On March 21, 1973, a further hearing was held before the Honorable Wayne Ross, Master of the Family Court. At that time, Mr. Ross disqualified himself from further participation in the case and directed that the matter be brought to the attention of a Superior Court judge. The matter was then assigned to me and I held a hearing on March 21, 1973.

At that hearing Mr. Fredericks informed the court that L.M. was presently in detention having run away from home, and having been the subject of a petition

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7. (Cont'd)

> (D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.

8. AS Sec. 47.10.010(3) provides:

> (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor . . .

alleging frequent truancy from school. He further stated that Mrs. "C" had obtained a child psychiatrist, Dr. Barbare Ure, who had met with the child and her mother, and

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8. (Cont'd)

> (3) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others; . . .

AS Sec. 14.30.010 provides in relevant part:

> When attendance compulsory. (a) Every child between seven and sixteen years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and sixteen years of age shall insure that the child is not absent from attendance.

AS Sec. 14.30.020 provides:

> Violation. A person violating Sec. 10 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $200, plus the cost of prosecution, and may be imprisoned until the fine and costs are paid or until he has served one day for every $2 of the fine and costs, at which time the fine and cost are automatically discharged. Each unlawful absence is a violation and if an absence is extensive there is a new violation each time five consecutive days of the absence elapse. The court may suspend sentence, stay or postpone enforcement of execution, or release from custody a person found guilty upon the conditions which are in the best interests of the child. In any event, at the expiration of the school year, the person shall be released and discharged from all penalties provided by this section.

While arguably a child's violation of this section would bring him within Sec. 47.10.010(a)(1), i.e. a minor who violates a law of the state . . ., the Family Court takes the position that the specific governs the general and that Sec. 47.10.010(3) which speaks specifically to truancy as a condition for being determined in "need of supervision" prevents a finding of delinquency predicated on "truancy" i.e. violation of AS 14.30.010.-.020, supra.

together they had worked out some program of counseling. He further stated that the parties had agreed that L.M. would be placed in a foster home during a period of counseling. Mr. Fredericks further informed the court that L.M.'s present status was uncertain as a previous petition alleging that she was a child in need of supervision had been sustained but that in lieu of disposition the Master, being convinced that the minor required a close setting and believing that under current statutory and case law he could not place the minor in a close setting, concluded that there was nothing the law could do and, therefore, dismissed the matter and directed that no further child in need of supervision petitions be presented since in the Master's opinion, such would be a waste of the parties' time and money.[9/] After explaining L.M.'s legal rights to her and convincing myself that she understood them at least to the extent that a fourteen year old could, I accepted the parties' stipulation that L.M. be placed in a foster home. Having previously explained to her that if she violated a court order she could be held in contempt of court and incarcerated, I explained to her that she was not to leave the foster home without contacting her psychiatrist, her social worker, or her mother. She agreed. The minor was released from McLaughlin on March 31, 1973, and placed in a foster home. She ran away on April 2, 1973, without giving the required notification, and was out of contact with her psychiatrist, her social worker and her mother for approximately one month, until apprehended on May 4, 1973. A detention hearing was held before Master Rhoads on May 4, 1973, and L.M. was detained

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9. The Master apparently met off the record with the intake officer at or about the time of the most recent petition. There is nothing on the record indicating a "dismissal of the petition." The results of the "disposition hearing" are discussed above.

pending further proceedings. In the meantime, L.M. was rushed to a hospital for medical care, resulting in further continuances until May 14, 1973.

A further hearing was held on May 14, 1973, before me, at which time L.M. was charged with contempt of court by the intake officer. The intake officer requested that if L.M. admitted the allegations of the petition, she be sentenced to the McLaughlin Youth Center for thirty days as a sanction for contempt of court. Because of the uncertainty of the law in this area, and the possibility of further incarceration of L.M., I appointed the Public Defender to represent her.[10/] To enable the Public

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10. Children's Rule 14 provides in relevant part:

> (a) Right to counsel. Where a juvenile matter has not been closed by informal adjustment or disposition, the juvenile, his parents, guardian, or custodian, upon the filing of a petition for adjudication, be informed of their respective rights to be represented by counsel in all subsequent stages of the proceedings. The court shall advise the juvenile, his parents, guardian, or custodian on the record, of the right to court-appointed counsel provided their circumstances qualify them under the provisions of Rule 15.
>
> (b) Waiver of right to counsel. If the right to counsel is waived and the court is satisfied that the waiver was intelligently and understandingly made, it shall be accepted. If the court is not satisfied that the waiver was intelligently and understandingly made and the interests of justice appear to so require, it shall appoint counsel unless specifically requested not to do so by the party concerned.

Children's Rule 15(a)(4):

> When the court shall appoint counsel. The court shall appoint counsel to represent the juvenile . . . (4) for the juvenile . . . in any situation where, in the opinion of the court, the interests of justice and the nature of the case warrant providing the assistance of counsel at the taxpayer's expense.

Consideration should also be given to Rule 11(a) permitting the court to appoint a guardian ad litem for the juvenile when her welfare requires it. Cf.

and L.M. continued in detention until that time. On May 15, 1973, a further hearing was held. Mr. Van Winkle, of the staff of the Public Defender Agency, appeared as counsel for L.M. He requested a two-day continuance to respond to the allegation that L.M. was in contempt of court. This was granted. However, with L.M.'s permission, Dr. Barbare Ure was permitted to testify regarding her contacts with L.M. in the interim and a proposed plan for L.M.'s rehabilitation.

Dr. Ure testified that the minor would not stay in a foster home, would not stay in her own home, had missed the better part of the school year, and required placement in a secure setting until such time as she could "reintegrate herself" since this was the only way to insure that L.M. would remain around for "treatment." Dr. Ure further testified that the circumstances of L.M.'s hospitalization indicated that her freedom in the community was hazardous to her health. Dr. Ure recommended institutionalization at McLuaghlin Youth Center.

I asked Dr. Ure for what period of time she felt L.M. would require institutionalization.

She responded that the current children's rights movement had substantially complicated the answer to my question. She continued:

> I have found in my experience of working with these young people that frequently they've got to be in a setting where they know that it's not up to them and

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10. (Cont'd)

AS Sec. 47.10.050 and AS Sec. 47.10.110. It is the policy of the family court to appoint attorneys for alleged children in need of supervision (usually the Public Defender) but only upon request. L.M. had refused counsel in the past. While I would agree that a child involved in a dependency or delinquency proceeding could theoretically waive the right to an attorney if some adult, i.e. the state in the former and a parent in the latter case, were present to protect the child's interest, I do not believe an alleged child in need of supervision can effectively waive counsel unless a guardian ad litem is appointed since in such a proceeding almost by definition there is a conflict of interest between parent and child (see n. 24, infra, and accompanying text). I have carefully reviewed the record and concluded beyond reasonable doubt that L.M. was not prejudiced by the court's failure to appoint an attorney before I appointed the Public Defender.

> . . . in the control system of the impulses . . . if the child has to control himself and it's up to the child, many children cannot really take the responsibility until they know that it's not really up to them, that it's inevitable, that control is a necessity. In other words, my experience has been that as long as there's an opening, a way out of having to face the problem, they don't face it. They will -- they will continue to -- to avoid facing the real conflicts, the real problems, the real pain'ul struggles that hurt just as long as they possibly can and only when they've reached the end of the road . . . only then can they begin to pull themselves together and decide what kind of a person they're going to be, how they're going to live their life and what's important. Consequently, . . . I can't really say for sure how long it would take L.M. to reintegrate or in other words pull herself together and say it's the (sic) inevitable.

The court then, at Mr. Van Winkle's request, recessed the hearing for two days.

The hearing resumed on May 17, 1973. The state, represented by Mr. Tim Middleton, argued that a child in need of supervision could not be held in contempt of court and incarcerated, but that a child guilty of "criminal contempt" could on that basis be adjudicated a "delinquent child and thereafter institutionalized. The state, therefore, moved to dismiss the petitions alleging contempt of court and substitute a petition of alleged delinquency. The court denied the motion but permitted the state to file an amended petition alleging as a separate count an act of delinquency predicated upon "criminal contem L.M. through counsel moved to dismiss the existing petitions on the ground that the court had no jurisdiction to enter an order requiring her to stay in a foster home, and, therefore, could not hold her in contempt for violating the order. This motion was denied without prejudice to its renewal supported by authorities. The court granted the parties a one-week continuance to prepare a response to the existing petitions. The court continued L.M. in detention pending that hearing but authorized her placement at the ACS receiving home if an opening was found and if the Division of Family and Children's Services could guarantee her appearance at further hearings. A petition alleging delinquency was filed on May 23, 1973, at which time a hearing was held. The court reviewed

L.M.'s legal rights with her and asked her to respond to [illegible]

of counsel, she denied the allegations and requested a trial. A date for the trial was set.[11/] Pending trial, L.M. was released from McLaughlin Youth Center for placement at the Alaska Children's Services receiving home. She agreed that she would remain on the premises of the receiving home twenty-four hours a day and would not leave except in the company of an employee of the home.

A further hearing was held on June 7, 1973, at which time the adjudication hearing was further continued until July 20, 1973 to permit the court to participate in the Trial Judges' College held at the University of Nevada. At the request of L.M. and with the concurrence of the Department of Family and Children's Services and the District Attorney's Office, L.M. was extended the general privileges of the receiving home during the intervening period.

A written order was entered on June 8, 1973, specifically setting out the conditions under which L.M. would reside at the receiving home pending her adjudication hearing. Specifically, it provided:

> (1) The child is to inform the authorities of the Anchorage Children's Christian Home of her whereabouts at all times when she is not on the premises of the home.
> (2) The child is not to remain away from the Anchorage Children's Christian Home overnight without the permission of the appropriate adult authorities of the home.
> (3) The child will obey the house rules that are set by the authorities at the Anchorage Children's Christian Home.

The order specifically set out an acknowledgement for L.M.'s signature. The acknowledgement provided:

> I acknowledge having received a copy of this order, having read it and completely understand what is expected of me. I recognize that any violation of this order on my part will

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11. A brief pretrial conference was held in chambers. Present were Mr. Rice and Mr. Middleton representing the state, and Mr Van Winkle representing L.M. At the conference L.M. requested and was granted a jury trial on the allegations of delinquency. All parties agreed that all safeguards available to adult criminal defendants except bail would thereafter be extended to L.M.

> constitute contempt of court and may [illegible]
> to be filed against me. I agree to abide by the conditions of this order.

The writing bears L.M.'s signature as well as her attorney's, Mr. Van Winkle, and Mr. Frederick's, the in-take officer, signatures as witnesses.

On July 26, 1973, Mr. Jay Warner, Intake Officer for the Family Court, filed a petition for revocation of conditions of release pending adjudication hearing. The petition stated in relevant part:

> . . . On or about July 2, 1973, at an unknown hour, at or near Anchorage, in the Third Judicial District, State of Alaska, L.M., a minor child, without permission and without informing the authorities of the said Anchorage Children's Christian Home left said children's home and remained away until July 3, 1973, when she returned. And that on or about July 3, 1973, at approximately 4:00 p.m., at or near Anchorage, in the Third Judicial District, State of Alaska, L.M., a minor child, without permission and without informing the authorities of the said Anchorage Children's Christian Home, left said children's home and remained away until July 24, 1973.

A detention hearing was held on July 26, 1973. At that hearing Mr. Frank Koziol, Assistant Public Defender, substituted for Mr. John Van Winkle as attorney for L.M. At that time Mr. Koziol indicated to the court that he had thoroughly discussed the facts of the case with L.M. and Mr. Van Winkle, and that the three of them had determined that it would be in the best interest of L.M. that she admit the allegations of the petition of alleged delinquency filed on May 23, 1973. Mr. Koziol made it clear that the minor was only admitting the facts and reserving the right to litigate the legal consequences of those facts.

I therefore discussed the factual content of the petition with L.M. I pointed out to her that a charge of contempt of court based upon violation of a court order has four elements: first, a person must be ordered to do something by the court; second, he or she must know that they have been ordered to do it; third, they must have the ability to comply with the order; and, fourth, they must willfully and knowingly violate that order. I told L.M. that unless all of these factors were present, she should not admit the petition. I pointed out to L.M. that if she was at all confused

about the order, its meaning or her responsibilities, she should not admit the petition. Further, I pointed out that if the conduct of any other person compelled her to violate the court order, she should not admit the petition; and, finally, I pointed out that if she had any doubts about the matter at all, she should not admit the petition. L.M. then admitted the facts of the petition in the presence of her attorney, Mr. Koziol.

We then proceeded to a consideration of the petition for revocation of conditions of release pending adjudication hearing filed on July 26, 1973. This petition was read to L.M. and in the presence of her attorney, after being advised of her legal rights, she admitted those allegations as well. L.M. then requested through her attorney that a disposition hearing be scheduled within thirty days and stipulated that she remain at the McLaughlin Youth Center in the interim.

A disposition hearing was then set for August 21, 1973, and ultimately held in two sessions: the first, on August 28, 1973, and the second, on August 31, 1973.

Dr. Joseph Bloom, a psychiatrist associated with the Langdon Clinic, and Kord Rosen-runge, testified as experts on behalf of the minor. Dr. Barbare Ure, a child psychiatrist in private practice in this area, and Susan Roguzka, a probation officer employed by the Division of Corrections of the State Department of Health and Social Services, testified on behalf of the State. Neither the minor nor her parents testified. The expert testimony pointed up the substantial differences of opinion both as to principle and policy that exists regarding runaways and their treatment. Generally, Mr. Rosen-runge and Dr. Bloom testified in support of a system that would permit minors who did not get along with their parents to obtain conciliation services and, if unsuccessful, separate maintenance or, in extreme cases, a divorce from those parents. In no event would these witnesses advocate court

support court intervention and institutionalization in the case of chronic or habitual runaways who could not otherwise be treated in the community. All of the witnesses opposed institutionalization as a treatment modality for the average child in need of supervision. Probation officer Roguzka indicated that detention had definitely been used in the past too frequently with children in need of supervision, and that while

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12. A number of recent law review articles support the position taken by Mr. Rosen-runge and Dr. Bloom. See, e.g., Novak, The Incorrigible Child under the New Penn. Juvenile Act: An Unsound Unsupportable and Unfortunate Policy Choice, 35 Univ. of Pittsburg L. Rev. 73 (1973); McNutty, The Right to be Left Alone, 12 Journal of Family Law 228 (1972-73); Chused, The Juvenile Court Process: A Study of Three New Jersey Counties, 26 Rutgers L. Rev. 488, 531-33 (1973); Comment, Non-Delinquent Children in New York: The Need for Alternatives to Institutional Treatment, 8 Columbia Journal of Law and Social Problems 251 (1972); Comment, Juvenile Delinquency Laws: Juvenile Women and the Double Standard of Morality, 19 U.C.L.A. L. Rev. 313 (1971); Green and Essesstyn, The Beyond Control Girl, 23 Juvenile Justice 13 (Nov. 1972); Comment, Juvenile Law: A Potential for Calif. Change, 2 Pacific L.J. 737 (1971). These writers advocate a community conciliation system for parents and children who don't get along in lieu of the present children's court. While conciliation proceeded the state would provide an alternate living situation for the child. Should the child not wish to reconcile with his parents, or the parents fail to make needed concessions, the alternate living situation would become permanent. In no event would any pressure be applied to the child to conform to parental wishes.

Implicit in this model for dispute resolution is an assumption that the relationship between state, parent and child is one of trust wherein the state is trustor, the parent trustee, and the child both the corpus of the trust and its beneficiary. Viewed in this way, the state and the parent have reciprocal rights and duties as do the child and the state, but as between the parent (the trustee) and the child (the beneficiary), the parent has only duties, e.g., to feed, clothe and house the child; and the child has only rights, e.g., to be fed, clothed and housed. Thus, if it is determined that a parent has a legal right to the custody of his child enforceable against the child, the trust analogy fails and the argument outlined above collapses.

I express no opinion as to which model, i.e. children's rights or parental rights, is the more appropriate or will win posterity's approval. Such questions are for the legislature, not the judiciary. My sole concern must be what do the statutes currently require.

some such children would only benefit from treatment in an institution, there was a substantial risk that institutionalization would be used too often in "frustrating" situations. Dr. Bloom also testified that while a "closed setting" might be theoretically defensible, he feared giving to a possibly vindictive court system imbued with a punitive philosophy the power to authorize it.

After considering all of the evidence, the court accepted the recommendation of the Division of Corrections and ordered the minor institutionalized, but deferred execution of the order for a period of sixty days to give L.M. one more opportunity to establish that she could be rehabilitated within the community. During the sixty-day deferred period, L.M. was assigned to the intensive care unit of the Division of Corrections Probation Department under the supervision of Sheila Lankford, it being understood that Ms. Lankford would carry a small caseload and, therefore, be able to spend a substantial amount of time with L.M.

On September 25, 1973, Ms. Lankford filed a petition with the court alleging that L.M. had violated the conditions of her probation in that she had run away from home on September 23, 1973, and stayed away until September 25, 1973, at which time she returned voluntarily. Ms. Lankford indicated that the child and family were in counseling and had regularly attended counseling sessions, and that the minor's behavior with the exception of the two-day absence without leave had been exceptional. Consequently, Ms. Lankford asked that the deferred order be continued and that the minor remain on probation. I accepted this proposal.

On November 2, 1973, this court, on the request of Ms. Lankford, vacated the deferred order of institutionalization and placed the child on regular probation having been advised that L.M. was functioning effectively within the community. In her report to the court, Ms. Lankford indicated that the minor and her parents had continued to participate in regularly scheduled family counseling with Dr. Ure, Melissa Middleton (of the Alaska Youth Advocates) and herself; that the parents had attended a class in

transactional analysis and family systems offered by the Corrections Department; and that the minor and her parents had mutually agreed upon a written contract setting out each's expectations of the other. She concluded that while L.M. had to a minor degree violated the conditions of her probation by going A.W.O.L. the week-end of September 25, 1973, and on other occasions missing her curfew, these problems were being worked out within the family and did not justify further court intervention.

On November 5, 1973, the minor ran away but returned of her own accord on November 7, 1973. On November 9, 1973, the minor ran away again and remained away until December 5, 1973, when she was apprehended by the police department. On December 6, 1973, Ms. Lankford petitioned to revoke the minor's probation. A hearing was held on December 6, 1973, at which time the minor denied the allegations of the petition and the matter was set for hearing on December 11, 1973.

The December 11, 1973, hearing was held, the court heard the testimony of Sheila Lankford, probation officer; Dr. Ure, child psychiatrist; L.M.; and her mother, L.C.; and a child care worker from Alaska Children's Services, Patricia Brown. Ms. Lankford testified that L.M. was now amenable to treatment and requested that L.M. not be institutionalized. The court detained L.M. for an additional week and took the matter under advisement. On December 18, 1973, I granted the petition to revoke probation but reinstated it on new conditions. I continued the minor in the custody of the Division of Health and Social Services under Ms. Lankford's supervision, and directed that she be placed in an appropriate home setting; and as a further condition of probation, directed that she be detained at McLaughlin Youth Center for a period of thirty days but allowed credit for any time spent since December 5, 1973. At the request of Ms. Lankford the minor was transferred upon leaving McLaughlin from her own home to the Alaska Children's Services Receiving Home.

On March 18, 1974, Ms. Lankford filed a further petition seeking revocation of probation. In it she alleged that on February 20, 1974, the minor ran away from the receiving home and remained away until March 16, 1974, when she was apprehended by the police.

In a hearing on March 19, 1974, the minor represented by Mr. Herb Soll of the Public Defender's Office denied the allegations of the petition and requested a hearing. The hearing was held on March 22, 1974, at which time after hearing all of the evidence the court found the minor had violated the conditions of her probation and had run away from the receiving home. The court heard further from Ms. Lankford who testified that she had exhausted community resources available to L.M. and recommended that the minor be institutionalized at the McLaughlin Youth Center. The court considered the minor's objections presented by her attorney and, after considering the evidence and the argument of the parties, directed that the minor be institutionalized. The judgment is dated March 28, 1974.

DISCUSSION

As previously indicated L.M. seeks to have her adjudication of delinquency set aside on a number of grounds. These grounds will be dealt with in order.

Before a party may be held in criminal or civil contempt for failure to abide by a court order, four elements must be established: (1) the existence of a valid order directing the alleged contemnor to do or refrain from doing something and the court's jurisdiction to enter that order; (2) the contemnor's notice of the order within sufficient time to comply with it; (3) the contemnor's ability to comply with the order; and (4) the contemnor's willful failure to comply with the order. Where the requested sanction is a period of incarceration, the party seeking citation for contempt must in addition prove that his rights or those of another party to the action have been materially prejudiced by the allege contempt.

L.M. challenges the validity of the subject order on two grounds: first she contends that while the statute providing for disposition in cases of children in need of sup vision does use the phrase "probation" as an alternate disposition, in fact a reading of the entire statute establishes the impropriety of "probation" for children in need of supervisio and requires a finding that the legislature intended dispositions of children in need of

supervision to be identical to dispositions of children found to be dependent. L.M. relies upon a reading of the entire statute as impliedly interpreted by Children's Rule 12 in support of this position.[13] Consequently, she concludes, the court had no jurisdiction to place her on probation and cannot hold her in contempt for violating the terms of such an invalid probation.

A review of the file establishes, however, that L.M. was never placed on probation prior to her adjudication as a delinquent child. Her earliest petitions were all dismissed prior to adjudication or disposition on the recommendation of the intake officer in order to pave the way for informal disposition. The only adjudication for child in need of supervision which proceeded to the disposition stage resulted in a recommendation by the master, confirmed by Judge Rutcher, releasing the minor to her parents without disposition. Her subsequent readjudication as child in need of supervision for truancy resulted in an informal disposition by stipulation of the parties where the minor remained under the supervision of the Division of Family and Children's Services, the agency supervising dependent children, rather than the Division of Corrections with a proposed placement in a foster home and counseling by Dr. Ure. Thus, that disposition and resulting order was one consistent with treating the minor as a "dependent" rendering L.M.'s argument about "probation" irrelevant.

In her trial brief L.M. contends that she was denied procedural due process in that the court did not give her adequate notice of her obligations and what she was required to do under the March 21 order. While L.M. is correct that as a matter of con-

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13. Children's Rule 12 provides in relevant part:

> 12(b) . . .
> A minor under the age of 18 years who (1) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others; or (2) by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian may be designated as a child in need of supervision and the procedure provided under these rules for the determination and disposition of dependency shall apply to him.

stitutional law she cannot be held in contempt for violating an order of which she had no notice, she cannot be held in contempt for violating an order of which she had no notice ...nder the common law without reference to the constitution. However, notice is a question of fact. L.M. was entitled to have a jury determine on all the evidence whether she did or did not have adequate notice of the order in question. After initially requesting a jury trial on this issue, L.M. withdrew that request and admitted the allegations of the petition. If this was error, L.M.'s remedy is to move to set aside her admission rather than challenging the adjudication predicated upon it.

While the Children's Rules make no express provision for withdrawal of an admission to the allegations of the petition, the Criminal Rules which to this extent at least are in pari materia do make specific provision (see Criminal Rule 32(d)).[14/]

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14. Criminal Rule 32(d) provides in relevant part:

> (d) Plea withdrawal. (1) The court shall allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct manifest injustice.
>
> (i) A motion for withdrawal is timely and is not barred because made subsequent to judgment or sentence if it is made with due dilligence.
> (ii) Withdrawal is necessary to correct a manifest injustice whenever the defendant demonstrates that:
> (aa) He was denied the effective assistance of counsel guaranteed to him by constitution, statute or rule, or
> (bb) The plea was not entered or ratified by the defendant or a person authorized to so act in his behalf, or
> (cc) The plea was involuntary, or was entered without knowledge of the charge or whether the sentence actually imposed could be imposed, or
> (dd) He did not receive the charge or sentence concessions contemplated by the plea agreement, and
> (A) The prosecuting attorney failed to seek or opposed the concessions promised in the plea agreement, or
> (B) After being advised that the court no longer co curred and after being called upon to affirm or withd w his plea, he dic not affirm his plea.

It is clear from the reported cases that the alleged contemnor need have notice only of the order itself. I have found no case that requires as a precondition for holding someone in contempt of court for failing to heed a court order that the alleged contemnor had prior knowledge of the existence of the contempt power and the sanctions that could be imposed when it is invoked. 15/

L.M. has conceded that she had the ability to comply with these orders and willfully violated them. Therefore, there is a factual base for holding her in contempt of court.

L.M. contends that she cannot be held in contempt of court because of the exclusive remedy provisions of AS 47.10.010(1) 16/ and AS 47.10.080(g). 17/ The majority rule holds that comparable provisions do not prevent holding a minor in contempt of court at least where "civil contempt" is involved, i.e. a proceeding to force

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14. (Cont'd)

> (iii) The defendant may move for withdrawal of his plea without alleging he is innocent of the charge to which the plea has been entered.
>
> (2) Once the plea has been accepted by the court and absent a showing that withdrawal is necessary to correct a manifest in justice, a defendant may not withdraw his plea of guilty or nolo contendere as a matter of right. Before sentence, the court may in its discretion allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.
>
> (3) A plea of guilty or nolo contendere which is not accepted or has been withdrawn shall not be received against the defendant in a criminal proceeding.

I assume that this procedure is available to L.M.

15. As a practical matter in this case L.M. was told that if any orders were made involving her, and she violated them, she could be held in contempt of court and incarcerated. I do not consider this notification necessary to an invocation of the contempt power.

16. See footnote 2, supra.

a child to do something in the future, e.g., testify in court (see e.g. Young v. Knight, 329 S.2d 195 (Ky. 1959); Application of Balucan, 353 P.2d 631 (Hawaii 1960); Accord, Bryant v. State, 271 N.E.2d 127, 129-30 (Ind. 1971)).

One case, In Re Williams, 306 F. Supp. 617 (D. C.D. 1969) has applied this rule to "criminal contempt of court." There certain minors were held in criminal contempt of court for violation of an injunction but the court held that the minors if convicted were to be housed in the juvenile facility rather than the jail.

The state agrees in part with L.M., at least to the extent that "criminal contempt" is involved. The state contends that "criminal contempt" by a minor is a violation of statute and thus is governed by AS 47.10.010(1)(a)(1) and AS 47.10.080(g). See Annotation, Court's Power to Punish for Contempt a Child within the Age Group Subject to Jurisdiction of Juvenile Court, 77 A.L.R.2d 1004 (1961).[17a]

The governing statutes support the state's position that any criminal activity by a child must be prosecuted in the Children's Court in a delinquency proceeding. The question then is, under Alaska law, was L.M.'s willful failure to abide by certain court orders involving her placement pending dispositon as a child in need of supervision, a crime. There is substantial dispute in the authorities as to whether failure to abide by a court order can ever be a criminal contempt (see, e.g., Goldfarb, The Contempt Power (New York & London: Columbia Univ. Press 1963), passim, esp. pp. 49-67.

Goldfarb states:

> As a result, one is left with but few and vague guides. A wrongdoer may never know, at the time of his wrong-

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17. AS 47.10.080(g) provides in relevant part:

> . . . nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter . . .

> ful act, whether he has committed a civil or criminal contempt or what the form of his sanction will be. Courts appear to survey all concomitants of a case and decide on the basis of the special characteristics of the act, the remedies sought, the nature of the action, and the aim of the remedy, whether the act looks like what has been vaguely considered civil or criminal contempt in the past. To this end the key issues considered by courts have been: Who will primarily gain from exercise of the contempt powers; is exercise of the power to punish a completed act or to coerce a future one; will the contempt proceeding constitute a separate action or will it be part of the execution of the original one; and what standard indicia of civil or criminal proceedings appear to attach to the processing of the power in the instant case . . . (id. at 66)

Goldfarb goes on to point out that disobedience to court orders, judgments and decrees is generally handled as "civil contempt" but he concludes:

> . . . A thorough consideration of the cases leaves a distinct impression that courts supply an ad hoc kind of accounting to contempt situations and arrive at conclusions which, no matter how just in the immediate case, compose only the most casual and intellectually unsatisfying link with any body of law or legal principle (id. at 67).

The Alaska Supreme Court in Johansen v. State, 491 P.2d 759 (Alaska 1971) has, however, determined that a violation of a court order is criminal rather than civil contempt where incarceration is imposed for a fixed period under AS 09.50.020[17b/] to punish a completed act rather than to coerce future conduct pursuant to AS 09.50.050.[18/] Thus, the court has adopted the "nature of the punishment" test. Specifically, the co..t

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17a. Cf. AS 47.10.060 (Waiver of Jurisdiction) which requires inter alia a finding that the minor is "not amenable" to treatment as a minor before jurisdiction can be waived. In light of Dr. Ure's testimony, L.M. is clearly amenable. See Davenport v. McGinnis, ____ P.2d ____ (Alaska 1974, Op. No. 1049); R.J.C. v. State, ____ P.2d ____ (Alaska 1974); and P.H. v. State, 504 P.2d 837 (Alaska 1972).

17b. See n. 3, supra.

18. AS 09.50.050 states in relevant part:

> When the contempt consists of the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he has performed it.

held that where the contempt power was invoked to punish the alleged contemnor for "past, willful, flouting of the court's authority" pursuant to AS 09.50.010(5) (cf. AS 09.50.020), contempt was criminal and the defendant was entitled to all substantive and procedural criminal safeguards; but where the contempt proceeding was instituted to "coerce future conduct" pursuant to AS 09.50.050, the contempt is civil but the defendant is entitled to a jury trial on the issue of his ability to comply with the order. Applying that distinction here, L.M no longer has the power to comply with the orders she has previously violated, though she certainly has the power to comply with similar orders in the future. Thus, if the state proceeds against her to sanction past conduct, as they are doing, it must be for a "crime", i.e., violation of AS 09.50.010(5), and such proceeding is limited by AS 47.10.010(1)(a)(1) and AS 47.10.080(g) to a delinquency proceeding in the Children's Court. Cf. State v. Browder, 486 P.2d 925 (Alaska 1971) which supports the state's contention that any contempt which does not meet the test of AS 09.50.050 is a crime by an adult and, therefore, an act of delinquency by a child.

In Johansen, supra, the Supreme Court noted certain inadequacies in this procedure stating at 491 P.2d 764, n. 22:

> There are two disadvantages to the character-of-the punishment test which affect primarily the trial courts and to which we call attention here. The first is that punishment is not determined until the end of the proceeding, whereas the need for classification exists from the beginning. Trial courts may overcome this in most instances by announcing at the outset the goal of the contempt action, specifying whether the action is designed primarily to vindicate the court's authority or to coerce compliance with one of its orders for the benefit of a third party. The second is that the alleged contemnor, at the time of his wrongful act, has no way of knowing whether he has committed a civil or criminal contempt, or what his sanction will be. . . . We deem this disadvantage outweighed by the benefits of an otherwise workable classicatory scheme and mitigated, for purposes of due process notice requirements, by the trial court's announcement, at the beginning of the proceedings, of the purpose of any punishment imposed.

L.M. does not deny that she knew from the inception of the contempt proceedings the state's intent, nor that she was afforded all the procedural safeguards mandated by Johansen, supra, and Browder, supra, but she contends that this procedure is unfair

as applied to her. She reasons that Johansen could only be found guilty of civil contempt to the extent that he had the immediate ability to comply with the order, and only under those circumstances could he be imprisoned and then only until he complied with the order. Should the state have proceeded against Johansen for "criminal contempt", then the maximum penalty that could be imposed would be imprisonment for a period of six months. In her case, however, if her violation of court order is deemed a crime, and therefore an act of delinquency, she can be imprisoned until her nineteenth birthday for a period of five years. This problem arises because the legislature did not distinguish between felonies and misdemeanors in making violation of a statute or ordinance, i.e., crimes, acts of delinquency while they did distinguish between felonies and misdemeanors for purposes of setting periods of imprisonment for adults. Thus, L.M.'s argument is really directed to permitting misdemeanors to be a basis for a finding of delinquency.[19/] The counter-argument usually made is that while the minor's exposure is to a greater period of incarceration, in fact the overwhelming majority of alleged delinquents are handled informally without even a court appearance and of the remainder, the majority are placed on probation. Of the institutionalized, the actual period of time spent in an institution is usually less than six months to a year. Witnesses testified that the minor, if institutionalized, would probably have to spend approximately four months at the McLaughlin Youth Center, but could during that period and thereafter earn her release by modifying her behavior. They testified further that it was unlikely that anyone would spend more than nine months in the institution (though on cross-examination by Mr. Van Winkle Ms. Lankford did agree that some of the girls at McLaughlin had been there for

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19. It is likely that the overwhelming majority of those found delinquent for violation of a statute have committed acts which if committed by adults would be misdemeanors rather than felonies, i.e., shoplifting, joy-riding, malicious mischief, minor in possession of alcohol or possesssion of marijuana. Thus, the majority of her fellow delinquents share L.M.'s complaint. This problem is mitigated, I believe, by the court's duty to reduce any claimed misdemeanor violation from "delinquency" to child in need of supervision where the child does not pose a substantial threat to the community and appears amenable to treatment as a child in need of supervision (cf. In Re H., 354 N.Y.S.2d 293 (N.Y. Fam. Ct. 1974)).

over a year). Nevertheless, to a certain extent the minor does "hold the key to her release" in her own hands since by her behavior in the institution she can effect her release within six months. Further, the legislature has afforded those adjudicated delinquent certain benefits that do not accrue to adult misdemeanants. For example, AS 47.10.080 provides in relevant part:

> (g) No adjudication under this chapter upon a status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction of a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceeding in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state. 19a/

The thrust of L.M.'s argument is essentially that subjecting her as a minor contemnor to a greater potential period of incarceration than an adult contemnor denies her the equal protection of the laws. This argument has generally been rejected (see In Re K.V.N., 16 N.J. Sup. 580, 283 A.2d 337, aff. 291 A.2d 577 (N.J. 1972); In Re W., 264 A.2d 614 (Pa. 1970)). As the Alaska Supreme Court pointed out in Alex v. State, 484 P.2d 677, 684 (Alaska 1971):

> The requirement of equal protection amounts to a prohibition of laws which, in their application, make unjust distinctions between persons (footnote omitted) If a rational basis for a classification is reasonably apparent, there is no denial of equal protection. It is elementary that the power to define crimes and fix punishments rests in the legislature. In the performance of that function, that body is to use the discretion lodged in it, and not be confined by narrow or unduly restrictive limits. We cannot say that a legislative judgment was unreasonable if it bears a rational connection to a legitimate public purpose, so long as a legislative classification

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19a. See cases cited in n. 17a, supra, for a discussion of the benefits accruing to a minor under Title 47.

is not based upon an arbitrary or unjustifiable distinction and does invidiously discriminate between two groups, there is no denial of equal protection.

Given the fact that a child cannot be incarcerated with adults (AS Secs 47.10.190, 47.10.130), the purposes to be served by placement at the McLaughlin Youth Center, the fact that the minor is entitled to immediate release when and if her conduct will justify it (AS 47.10.200 and see AS 47.10.080(f)), the fact as noted in Alex, supra, that there is no obligation to institutionalize upon the finding of a contempt of court, or in fact no obligation to predicate delinquency on any act including a contempt of court if under all the facts and circumstances a finding of delinquency is not warranted, [19b] it does not seem that the potentially greater exposure to incarceration facing minors than adults for contempt of court, or for that matter facing minors than adults for misdemeanors, denies the minors the equal protection of the law.

Cases from other jurisdictions are in disagreement as to whether violation of court order can be an act of delinquency. Due to the substantial differences between the statutory schemes in those jurisdictions and in Alaska, I have given them little consideration In Re Presley, 47 Ill.2d 50, 264 N.E.2d 177 (1970) held, pursuant to a statute specifically making violation of a court order an act of delinquency, that a girl's running away from a foster home after having been previously adjudicated a child in need of supervision in violation of an order to remain in the home was an act of delinquency supporting her institutionalization (Accord, People v. Sekeres, 48 Ill.2d 431, 270 N.E.2d 7 (1971)). An intermediate Colorado appellate court held to the contrary (see People ex rel D. R. v. E. R., 29 Colo. App. 525; 487 P.2d 824 (1971)). The Colorado court based its

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19b. This seems implicit in the statute. Certainly if the intake officer has discretion to not proceed formally against a child who admits commission of a crime, the court has equal discretion, if all of the facts warrant the exercise of discretion. Further, it would seem that the court has discretion to treat all delinquents whose crime was a "misdemeanor" as children in need of supervision if warranted by the circumstances. See n. 19, supra.

determination on two considerations: first, that while the sta e did specifically allow a finding of delinquency based upon a violation of court order, a reading of the entire statute rendered this provision ambiguous since the legislature had gone to great lengths to distinguish between two classes, namely delinquents and children in need of supervision, and had specifically provided that a child in need of supervision could not be placed in the state training school. The court reasoned that the legislature could not have intended that conduct which initially could only result in an adjudication as a child in need of supervision would, if continued, result in a finding of delinquency and exposure to the state training school. This is a non-sequitur since the majority of modern statutes make exactly this provision, i.e., that children which we would classify as children in need of supervision cannot at the first instance be placed in a state training school, but may if the behavior which brought them to the attention of the court continues after adjudication as a child in need of supervision be placed in a state training school.[20/]

In fact, without changing the classification from child in need of supervision to delinquent, this was exactly the procedure then applicable in Colorado (see Sec. 22-3-12, Laws of Colorado, Supplement 1967)).[21/]

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20. See California Welfare Institution Code, Secs. 601, 730 and 777. This is the recommendation included in most of the model acts (see Novak, supra, n. 12, pp. 78-80); see also Forer, A Children and Youth Court: A Modest Proposal, 4 Col. Human Rights Law Review 337, proposed section 2(3) which defines as guilty of a delinquent act a child who "without cause repeatedly runs away from home but there shall be recognized justifiable runaways from an unjustifiable home." Id. at 348. Foere would permit institutionalization.

The Colorado courts' position is a variant of the argument made by the authorities cited in n. 12, supra, that there is no conceptual difference between running away before and after the entry of a court order. This argument shows ignorance of the entire history of the contempt power and the fact that most imprisonment for contempt follows violation of injunctions against conduct which is not independently a crime. In fact, for years equity would not prevent a commission of a crime.

21 It should be noted that the provision barring initial commitment at the state training schools in Colorado was repealed by Colorado Laws 1971, p. 294, sec. 2, so that at the present time children may be assigned to the state training school immediately upon adjudication as children in need of supervision. This cannot be done in Alaska; see In Re E.M.D., 490 P.2d 658 (Alaska 1971).

The second argument of the Colorado court was that the legislature had set up a specific procedure to be followed in the case of violation of probation, thereby precluding the necessity of resort to a finding of delinquency. The Colorado statute provided that after a hearing to determine whether the conditions of probation had in fact been violated, the court could make any order that it initially could have made. Included among those orders was commitment to the Colorado Youth Center. The Colorado law as it then existed permitted placement in the state training schools only at the direction of the Department of Corrections and not at the court's own order. (This practice was specifically rejected by our Supreme Court in In Re E.M.D., 490 P.2d 658 (Alaska 1971).)

In Alaska as one of the dispositions available for a child in need of supervision, the legislature has permitted the court to place the minor on probation under those conditions and limitations that the court may proscribe (see AS 47.10.080(j)); there is no provision in the statute or in the court rules governing what happens if the child violates the conditions of that probation. In fact, L.M. has argued throughout this case that the legislature's failure to spell out the consequences of a child in need of supervision's violation of her probation, coupled with the legislature's withholding of the power to institutionalize, establishes that the legislature did not really mean the word "probation" used in connection with children in need of supervision to have its functional or traditional meaning. Thus, she argues, the only available disposition is to treat her as a dependent child. Whether or not she is correct, it is clear that Alaska, unlike Colorado, does not have a "definitive" set of provisions governing revocation of probation that would conflict with a finding of contempt.

Before leaving this issue, it should be pointed out that L.M.'s primary argument in this case is that as a child in need of supervision whose conduct from the inception of the case to the present has not changed, should not be placed in a closed setting, i.e. one where the doors may be locked. The cases upon which L.M. relies proceed to a different point, namely, that the child should not be placed in a state training school. In Colorado, California, Illinois and New York, children in need of supervision can at

the first instance be placed in juvenile halls or youth centers, i.e. places with locked doors, but cannot be placed at the state training school, i.e. maximum security institutions. The McLaughlin Youth Center in Anchorage is more the equivalent of a juvenile hall than it is a state training school. It should be noted that Alaska has contracts with Colorado and California to place Alaska delinquents who are too sophisticated for McLaughlin in the state institutions in those states. Thus L.M. is not threatened with placement at either the California or Colorado training schools; she is threatened with placement at the McLaughlin Youth Center which is the equivalent of a California county juvenile hall or the Colorado Youth Center, dispositions which in California and Colorado are available for status offenders.

Finally, the recent New York Court of Appeal's decision in C. v. Redlich, 32 N.Y.2d 588, 347 N.Y.S.2d 51, 300 N.E.2d 424 (1973) requires comment. That court had recently held in Matter of Thomasita Ann, 30 N.Y.2d 927, 335 N.Y.S.2d 683, 287 N.E.2d 377 (1972) that the New York Code provisions similar to our provisions establishing children in need of supervision as a class were constitutional and that a child in need of supervision could be placed in a closed setting and deprived of her freedom. In that case Thomasita Ann had been sent to the state training school but had been released prior to the determination on appeal, thus, making that issue moot. In Redlich, supra, the court held that children in need of supervision could not be placed in the same facilities that treated delinquent children. The decision was made with specific reference to the New York state training schools. Those institutions are set aside for the most hardened of the delinquents. The court specifically did not hold that a child in need of supervision could not be placed in a "closed setting", i.e., one where the doors were locked and the child was not permitted to come and go as she pleased. The only placement that was precluded was one in a school for delinquents.

Substantial evidence was introduced during the many hearings of this case regarding the population at the McLaughlin Youth Center. Based upon that evidence, it

seems clear that the kind of children who are extremely aggressive, and extremely hardened in delinquency, are not treated at McLaughlin Youth Center, but are sent outside for placement at schools in Colorado and California under contract with the State of Alaska. While the population at McLaughlin is made up at the present time exclusively of "delinquents", the evidence introduced at trial, together with my own experience in the juvenile court, convinces me that while delinquency in some form is a prerequisite to gaining admission to McLaughlin, it is not the real reason that the child is at McLaughlin. The overwhelming majority of delinquents with strong family ties are treated in the community. Those delinquents who end up at McLaughlin are by and large there for the same reason that L.M. may be there, namely, an unwillingness to remain at home or a home substitute, and heed parental or a custodian's regulations. It should also be noted that the overwhelming majority of institutionalized delinquents committed misdemeanors, not felonies. Based upon the evidence I am convinced that L.M. and other chronic runaways would not be distinguishable in sophistication, exposure to criminal activity, etc. from the average girl in the population at McLaughlin, and that therefore the reasoning of the New York Court of Appeals should not apply to Alaska. 21a/

Finally, L.M. argues that the Alaska Supreme Court in Breeze v. Smith, 501 P.2d 159 (Alaska 1972) ruled that the right to liberty set out in Art. I, Sec. 1 of the Alaska State Constitution 22/ guarantees every Alaskan regardless of age ". . . total

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21a. It should also be noted that the group homes operated by Alaska Children's Services contract with both the Division of Corrections and the Division of Family and Children's Services, and consequently L.M. has met and will meet the same girls in the group homes as in the Youth Center. There is no empirical evidence of which I am aware that would enable an Alaskan court to distinguish between girls who will not live at home and as a result of shoplifting, joy riding, etc., end up at McLaughlin, and girls who as chronic runaways end up in group homes. In fact, I know of no evidence that either group comprises a homogenous class identifiable as such.

22. Art I of the declaration of rights of the Alaska State Constitution, Sec. 1, provides:

> Inherent rights. This constitution is dedicated to the principle that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the state.

personal immunity from governmental control: the right to be let alone . . ." (citing id. at 501 P.2d 168), which L.M. contends the Supreme Court qualified only to the extent that it " . . . must yield when (it) intrudes upon the freedom of others . . ." citing id. at 501 P.2d 170 (matter in parentheses supplied); therefore, L.M. continues, a citizen's right to liberty as enunciated in Breeze, supra, (bolstered by the more recently enacted "right to privacy"[23/] cannot be infringed by preventing him from doing anything that does not injure a specific definable victim. Consequently L.M. concludes since her conduct, i.e., running away from home and foster home placement did not injure anyone (except perhaps herself which she contends has not been proved), it necessarily follows that it cannot constitutionally be interfered with by the state.

It is not necessary to determine whether the Supreme Court has in fact read John Stewart Mill's essay on liberty into the Alaska State Constitution since L.M.'s conduct does satisfy both Mill's test and her test of controllable conduct, i.e., a definable victim whose rights are prejudiced by the conduct to be controlled.

L.M. begs the question when she assumes that the only interest to be protected by legislation affecting children in need of supervision is that of the subject child. In fact the parents' interest, paramount in the past, must be considered.[23a/] Properly understood proceedings against children alleged to be in need of supervision are in substance and effect custody disputes where the contestants are parent and child, and the parent appeals to the court to vindicate and enforce his custody rights in the child against that child.[24/] Viewed in this light, the statutes creating the status "child in need of supervision" bear the same relationship to a parent's custody rights as those

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23. Alaska Constitution, Art. I, Sec. 22, provides:

> Right to privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

defining theft bear to a citizen's right to private property. In each case the statute recognizes and protects a right deemed important by the community by punishing interferences with that right and, second, by providing a judicial remedy discourages

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23a. The U.S. Supreme Court has on a number of occasions held that a parent's "right" to the custody and control of his child was constitutionally protected. See Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L.Ed2d 147 (1973); Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972); Stanley v. Illinois 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed.2d 551 (1972); Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L.Ed.2d 62 (1965); May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L.Ed. 1221 (1953); Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L.Ed. 1070 (1925); Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1932). See discussion in: Burt, Forcing Protection on Children and their Parents, 69 Mich. L. Rev. 1259, 1268-1288 (1971); Dobson, The Juvenile Court and Parental Rights, 4 Family L.Q. 393 (Dec. 1970); Sullivan, Child Neglect: The Environmental Aspects, 29 Ohio State L.J. 85 (1968); Young, The Problem of Neglect: The Legal Aspects, 43 J. of Fam. Law 29 (1964); and Note: Child Neglect: Due Process for the Parent, 70 Col. L. Rev. 465 (March 1970).

Admittedly, only Wisconsin v. Yoder, supra, addresses the possible conflict between parental and children's rights and there expressly reserves the question, though there is strong dicta in some of the opinions favoring the rights of parents over their children and Justice Douglas disagrees.

Finally, it should be recognized that statutes penalizing runaways and incorrigible children as criminal substantially antedate the foundation of children's courts and the statutes establishing them. In fact, such statutes existed in colonial times. See Commonwealth v. Brasher, 270 N.E.2d 389 (Mass. 1971).

24. While there is much discussion of parental rights in reported cases, few cases attempt to define those rights making discussion difficult. A careful review of the literature, both case law, treatise and law review, indicates that the following have been listed as "parental rights" protected by the constitution:

(1) Physical possession of the child which, in the case of a custodial parent includes the day to day care and companionship of the child in the case of a non-custodial parent, the right to visitation.

(2) The right to discipline the child which includes the right to inculcate in the child the parent's moral and ethical standards.

(3) The right to control and manage a minor child's earnings.

(4) The right to control and manage a minor child's property.

(5) The right to be supported by an adult child.

(6) The right to have the child bear the parents name.

(7) The right to prevent an adoption of the child without the parents' consent.

resort to self-help and the attendant risk of violence.[25] Lest I be misunderstood, I do not hold that a parent's custody right is a property right. The theft analogy is just an analogy, nothing more.

Thus, before L.M. can sustain her case that the child in need of supervision procedure including the invocation of the court's contempt power to enforce orders made pursuant to it is an unconstitutional invasion of her liberty and privacy, she must first establish that her mother has no legally enforceable right to her custody. For if a parent has a legal right to the custody of his child, it necessarily follows that the right is enforceable against the child as well as others, since by definition a legal right is one enforceable in a court of law and the existence of the right in the parent entails the correlative duty in the child as well as others to respect that right.[26] True, like all legal rights a parent's right to the custody of his child is not absolute and may be

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24. (Cont'd)

Of these so called residual parental rights, those that remain after custody is placed in another, include the right to consent to an adoption and by withholding consent prevented, the right to visitation and the right to have the child bear the parents' name.

25. By withdrawing court assistance (and police assistance) from embattled parents the state is not inducing compromise but is in fact encouraging violence, since parents have the right under Alaska law to physically control their children. See AS 11.15.110 (1) as interpreted (in Oregon) in State v. England, 349 P.2d 668 (Ore. 1960), and compare the civil liability of parents for disciplining their children which is discussed in Hebel v. Hebel, 435 P.2d 8, 14-15 (Alaska 1967). See also Levee, Criminal Liability for the Punishment of Children, 43 Journal of Criminology, Criminal Law and Police Science, 719 (1952-1953) and Annot., Liability for Punishment of Children, 89 A.L.R. 2d 396 (1963).

In this context consideration should be given to the case of State v. Rigler, 266 A.2d 887 (Del. Supp. 1970) where a 15-year old girl cut her classes and went to her boyfriend's apartment, her mother followed and with the help of the mother's boyfriend, removed the girl from the apartment resulting in a scuffle leading to the boyfriend's conviction for technical assault on the mother.

Consideration should also be given to the fact that in our society the family relation is a frequent source of violence (see Pamas, Judicial Response to Inter-family Violence, 54 Minn. L. Rev. 585, esp. 641-44 (1970) and Id. The Response of Some Relevant Community Resources to Interfamily Violence, 44 Ind. L.J. 159 (1969); and id. The Police Response to Domestic Disturbances, 1967 Wis. L.Rev. 914. If parents have a right to the custody of their children and the right to use force to protect that right as they apparently do under Alaska law, then the availability of a judicial form for the resolution of inter-family disputes may be a necessary alternative to substantial inter-family violence.

lost through divorce,[27] by conduct depriving the child of the necessities of life,[28] by abandonment,[29] by the child's emancipation,[30] or, subject to constitutional limitations, where the child's best interests would be served by a limitation or termination of parental rights.[31]

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26. For the meaning of legal right and its relation to its correlative legal duty, see Wesley N. Hohfeld, Some Fundamental Conceptions as Applied in Judicial Reasoning, Part I, 23 Yale L.J. 16, 28-32 (1913); Part II, 26 Yale L.J. 710 (1917); J. C. Gray, The Nature and Source of the Law (2nd Ed.) (N.Y.: The McMillan Co. 1948, pp. 7-26, esp. p. 12.

27. AS 09.55.205 gives a court in a divorce action the right to provide for the custody of the children. The Supreme Court has indicated that a parent is entitled to a preference over third parties in an action for custody unless the third party establishes that the parent is unfit or alternatively that the welfare of the child requires placement with someone other than the parent (see Bass v. Bass, 437 P.2d 324 (Alaska 1968).

28. See AS 47.10.010(a)(5) which, when read in conjunction with AS 47.10.080(c) and AS 47.10.290(3), permits the state to take custody of a child who "lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian."

29. See AS 47.10.010(a)(4) which authorizes the state to take custody of a child who has been abandoned. See D.M. v. State, 515 P.2d 1234 (Alaska 1973); it would appear that the common law doctrine of "constructive desertion" would apply here as well as in domestic relations disputes. Under that doctrine, a spouse who leaves the family home because of cruelties or indignities is deemed not to have deserted the home but in fact to have been constructively deserted by the spouse causing the indignities or cruelty even though the spouse causing the cruelty continues to offer to maintain a home for the spouse that has left.

30. A child is emancipated as a matter of law when he or she reaches the age of majority which in Alaska is 19 years of age; AS 25.20.010. See R.L.R. v. State, 487 P.2d 27 (Alaska 1971). The legislature has the power to fix and change the age of majority (see Ruhsam v. Ruhsam, 515 P.2d 1199 (Ariz. App. 1973).

The common law permits emancipation where a parent by act or omission extinguishes parental rights and duties and removes the disabilities of infancy. See Vaupel v. Bellach, 154 N.W.2d 149, 150,51 (Ia. 1967); Allen v. Arthur, 220 N.E.2d 658 660, 119 Ind. App. 460 ( ); Perkins v. Roberbson, 295 P.2d 972, 975, 140 Ca.2d 536 ( ); but there is a strong presumption against emancipation prior to the age of majority (ibid.) and the acts of the child standing alone are not enough. See Schirtzinger v. Schirtzinger, 117 N.E.2d 42, 43-44, (Ohio App. 1952), but cf. Roe v. Doe, 29 N.Y.2d 188, 324 N.Y.S.2d 71, 272 N.E.2d 567 (1971). Generally, before a child can be said to be "emancipated" he must be capable of supporting

L.M. was given an opportunity to show any of the foregoing as a defense to a finding that she was a "child in need of supervision" or, subsequent thereto, to a finding that she had committed criminal contempt of court and was therefore delinquent by violating

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30. (Cont'd)

himself. In this context Alaska law substantially limits the ability of a child less than 16 to support himself (see e.g. AS 23.10.325-23.10.370, esp. 23.10.335, as interpreted by 8 AAC 05.010 and 8 AAC 05.030 which requires that a child between the ages of 14 and 16 not be employed during school hours.

31. As previously indicated the "best interests of the child" is the test normally applied in custody disputes whether between parents (see n. 27, supra) or third parties (see Hickey v. Bell, 391 P.2d 447 (Alaska 1964); Wilson v. Mitchell, 406 P.2d 4 (Alaska 1965); and Bass v. Bass, 437 P.2d 24 (Alaska 1968)). AS 47.10.010 gives the court jurisdiction "in a controversy concerning custody of a minor" to appoint a guardian of the person and property of a minor or place custody in the state Department of Health and Social Services and require a parent to support the child without a finding of dependency (see AS 47.10.010(c)).

And, while AS 47.10.080(f) is open to more than one interpretation, it appears to make the child's "best interest" the test of continued placement, probation or supervision for all dependents, delinquents and children in need of supervision, though the public interest is to be considered as well.

However, there are substantial constitutional problems where the "best interest of the child test" is used outside of the area of custody disputes between parents. See Levine, Caveat Parens: A Demystification of the Child Protection System, 35 Univ. of Pittsburgh L. Rev. 1 (1973); Thomas, Child Abuse and Neglect, Part I: Historical overview, Legal Matrix, and Social Perspectives, 50 N. Car. L. Rev. 293 (1972); Burt, Forcing Protection on Child and their Parents, 69 Mich. L. Rev. 1259, 1268-1288 (1971); Dobson, The Juvenile Court Parental Rights, 4 Family L.Q. 393 (Dec. 1970); Sullivan, Child Neglect: The Environmental Aspects, 29 Ohio State L.J. 85 (1968); Young, The Problem of Neglect: The Legal Aspects, 43 Journal of Family Law 29 (1964); and Note, Child Neglect: Due Process for the Parent, 70 Colum. L. Rev. 465 (March 1970). While each of these authorities criticizes the state's use of dependency proceeding to deprive parents of their children, because of disagreement traceable to social, cultural and economic considerations regarding proper child rearing techniques, they would seem to apply more forcefully where the state seeks to deprive a parent of his child for no cause at all other than the child's wishes. See cases cited supra, n. 23a.

It should be noted that Alaska law in a number of circumstances permits a child over the age of 14 to participate in the selection of a custodian or guardian; but California, with identical statutes, has held that such selection while entitled to consideration is not binding on the court (see Comment: The Role of The Child's Wishes in California Custody Proceedings, 6 U.C. Davis L.R. 332, 353 (1973)). Implicit in the court's power to order a custody arrangement over the child's objection is the power to enforce that order against the child. Of course, the exercise of that power is discretionary, not mandatory.

orders regarding her placement but she failed to do so.

Thus, by refusing to participate in a program of rehabilitation, i.e., by constantly running away in violation of the court order, L.M. directly defeated and prejudiced her mother's right to her custody, exposing L.M. to imprisonment if she were an adult (AS 09.50.020) [32/] and adjudication as a delinquent if a minor (see AS 47.10.010(a)(1)).

It might be argued that the foregoing only applies while L.M. is residing with her mother, and that L.M.'s running from the foster home and later the group home could not affect her mother's custodial rights which had already been suspended by the foster placement and assumption of custody in fact if not in law by the state. Further L.M. might argue whatever rights the state might have correlative to their duty to feed, clothe, shelter and supervise her did not rise to the level of the rights contemplated by AS 09.50.020.

Since it is clear that L.M.'s conduct even after placement in foster care prejudiced her mother's right, it is not necessary to determine whether (1) action prejudicial to the state's rights as custodian would justify imprisonment pursuant to AS 09.50.020; and if not, whether (2) a contempt must be punishable by imprisonment if committed by an adult, e.g., rather than merely a fine, before it can qualify as an act of delinquency if committed by a child.

L.M.'s argument again assumes that children in need of supervision are simply a sub-class of dependents and that the "supervision" contemplated by the statute is

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32. While it is unlikely that an adult under contemporary law would find herself in a position exactly analogous to that of L.M. at common law a spouse was frequently imprisoned for leaving his or her spouse without just cause, i.e. without divorce or a decree granting separate maintenance, and a law to this effect remained on the books in Scotland until 1971. (Matrimonial proceedings and Property Act 1970 Sec. 20, repealing Matrimonial Causes Act 1965 Sec. 13; but see note in 3 The Juridical Review 156 (1891).) It should be noted that L.M. seeks separation from her mother for reasons that would not enable one spouse to divorce or obtain separate maintenance from the other in a jurisdiction, not recognizing incompatability as a ground for divorce.

simply the furnishing of food, clothing, shelter and schooling in lieu of that which would otherwise have been provided by a parent. But this assumption begs the question for in fact, viewed historically, the purpose of the supervision or treatment contemplated by the creation of the status child in need of supervision and its predecessor non-criminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control (cf. AS 47.10.280). Thus, the state's efforts regarding the child are not directed solely at providing an alternate living situation (as they are in a true case of dependency) but at putting the child back in her own home and the reestablishment of her mother's custody and supervision over her and any foster placement is merely a means to that end, not an end in itself. Thus, by rejecting "treatment" L.M. defeats, or at least slows, this reintregration process and thereby prejudices her mother's right to her custody and control, subjecting herself to the more severe sanction contemplated by AS 09.50.020.

CONCLUSION

Whether we characterize L.M. as a delinquent child, a child in need of supervision, a dependent child, or merely a child whose custody is disputed in a domestic relations proceeding, [33/] the court has (under existing law) authority to

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33. It must be understood that a minor L.M.'s age without doing anything to attract court attention, could have her custody placed in issue in a divorce or other domestic relations proceeding. The court would issue an order ultimately resolving the custody dispute which would be as binding on the child as on the disputants. True, the child if reasonably mature would be permitted to state a preference (see AS 09.55.205 (1) and cf. AS Secs. 13.26.040 and 13.26.055 which make fourteen the age at which a minor may express a preference as to his guardian); but the child's decision is not binding on the court if the child's proposed appointed guardian or custodian is, in the court's opinion, not consistent with the child's best interests (see AS 13.26.055). Hatherly, in his article The Role of The Child's Wishes in California Custody Proceedings, 6 U.C. Davis L. Rev. 332 (1973) discusses the California cases which interpret the interplay between the California equivalence of AS Secs. 09.55.205(1) and 13.26.055. But as the cases establish, the "child's best interest" is an ambiguous standard which

make orders affecting her custody (after extending to her all procedural safeguards including notice and an opportunity to be heard and, in appropriate cases, the appointment of counsel) and enforce those orders against her. Certainly, conciliation should precede coercion; and if coercion is necessary, mild sanctions should first be tried before more severe sanctions are imposed. But where mild sanctions fail, the court's orders must be enforced and severe sanctions will be imposed if necessary. I have considered those sanctions other than institutionalization, which are suggested in the literature, and must reject them for reasons which I will set out.

No sanction may be imposed on a child either directly or as a condition of probation unless it is clearly spelled out in the appropriate statutes. See In Re M.L., 317 A.2d 65, 64 N.J. 438 (1974). Thus, I cannot impose a fine on L.M. (ibid.),[34/] and the same principle precludes use of corporal punishment.[35/]

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33. (Cont'd)

means different things to different judges and appellate courts hesitate to overturn such decisions unless there is an apparent inadequacy in the trial court's chosen custodial home. See, e.g., Nichols v. Nichols, 516 P.2d 1215 (Alaska 1973). Thus, many children involved in child custody disputes will in the ordinary course find themselves placed with a less favorite parent and yet this decision will be binding upon them and enforceable against them. I have attempted to protect the interest of minor children in divorce cases by appointing counsel to represent them and treating them as parties to the case as I believe they are (see Hatherly, supra, esp. pp. 352-353), but this is not a general practice. The point I am making is that most children (and adults) who are permitted to fully participate in a court proceeding and have their position heard accept the judgment of the court whether they agree with it or not, and no problem of enforcement arises. But when a party does not acquiesce and refuses to comply with the court's orders, regardless of the nature of the proceeding, the contempt power is waiting.

34. L.M. being an unemployed minor, a fine would be an unproductive sanction in any event.

35. I have listed corporal punishment as a "milder" sanction than institutionalization because I believe most children (and adults) would prefer it to any extended period of incarceration. I also realize that a good argument could be made for the proposition that in cases such as this one (and most adult misdemeanors by other than hardened criminals), it would be a more effective sanction than incarceration. See Levy, Criminal Liability for Punishment of Children, 43 J. of C.C. and P.S., 719, 725 (1953-1963); cf. Singer, Psychological Studies of Punishment, 58 Calif. L.Rev. 405(1970). But Virginia is the only state which has ever permitted it as a juvenile disposition and

I have tried short periods of confinement unsuccessfully with L.M. and accept Ms. Lankford's testimony that short-term, i.e. 30 days or less, confinement would have no effect on L.M.'s future behavior; and if repeated each time L.M. ran away, would continue almost indefinitely into the future with L.M. enjoying brief periods of general freedom in the community between periods of confinement subjecting L.M. to all of the disadvantages of confinement with none of the advantages of participation in an institutional program.[36/]

Finally, I have suggested placement outside the community in a private school or other open setting as an alternative to a closed setting in this community, but L.M. (through her attorney), her mother and the State of Alaska have all rejected this proposal and requested that L.M. remain in this community. Consequently, we are faced with the following facts: L.M. is a frequent, if not constant, runaway. While verbally willing to cooperate with state supervision towards reintegration into her family, she has consistently rejected it by her actions. She has been counseled by representatives of the Division of Mental Health, the Division of Corrections, and the Division of Family and Children's Services, as well as two separate private psychiatrists -- those connected with the

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35. (Cont'd)

that statute was repealed (see Levy, supra, citing Virginia Code Sec. 63-303 (1950) repealed Acts 1950, p. 698); and the Alaska statute clearly does not authorize it. Consequently, it is not necessary to determine whether corporal punishment, with or without the child's informed consent (e.g. as a condition of continued probation) would be constitutional. Cf. Ware v. Estes, 328 F. Supp. 653 (N.D. Tex. 1971, aff. 458 F.2d 1360 (5th Cir. 1971), cert. den. 409 U.S. 1027, 93 S. Ct. 463, 34 L.Ed.2d 321 (1972); Glaser v. Marietta, 351 F. Supp. 555 (D.C. Pa. 1972); Gonyaw v. Ladue, 361 F. Supp. 366 (D.C. Vt. 1973). (The foregoing all hold that corporal punishment in public schools is constitutional against a variety of challenges on the ground that it has historically been practiced there and is nationally a common practice, i.e. a usual practice, with Nelson v. Heyne, 355 F. Supp. 451 (D.C. Ind. 1973) (holding that corporal punishment in a juvenile correctional institution is unconstitutional on the ground that it is "cruel" and unusual, i.e. a practice which occurs in only a few states).) As previously indicated, I know of no state that permits corporal punishment as a judicial disposition in juvenile cases, either directly or as a condition of probation. aff. 491 F2d 352 (7th Cir.) cert. den. 94 S.Ct. 3183 (1974)

36. Those in dentention do not participate in the institution's "program".

Langdon Clinic and Dr. Barbare Ure, and if anything, her problem has continued to increase. In summary, every effort at in-community conciliation has been tried and I cannot but find on this record that her parents have cooperated fully in the conciliation program, meeting in group sessions with representatives of the Division of Corrections, Dr. Ure, Melissa Middleton, and the minor. We have reached the point in these proceedings where the court can find as a matter of fact that L.M. will not abide by any orders it enters regarding her supervision under AS 47.10.080(j), and is therefore in willful criminal contempt of the court's authority. Were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior; and all of these, save institutionalization, have been tried and have been unsuccessful. Since her adjudication as a delinquent, L.M. has twice left her custodial placements and been away in the community for a period in excess of thirty days without notifying any of the adults allegedly responsible for her. Consequently, the court has no choice but to order her institutionalization.

DATED at Anchorage, Alaska, this 13 day of June, 1974.

JAMES K. SINGLETON, JR.
JUDGE OF THE SUPERIOR COURT

cc: Honorable H. J. Butcher
John Van Winkle, Assistant Public Defender
Joseph D. Balfe, District Attorney
Timothy G. Middleton, Assistant Attorney General
Sheila Lankford, Probation Officer
Mr. and Mrs. Robert Crow

HB
211

CS HB 211 HCS/dalPlan

(1) 41.45.010 line 16 delete "commodity"

(2) 41.45.040 (b)
41.45.060.
41.40.070 Sec 4
> reflect 5 state + 5 federal members

(3) 41.45.080 (2) delete present wording + substitute "encourage the early + effective development of common management agreements among federal + state agencies + private landowners"

CSHB 211 (Judiciary)
Offered in the HOUSE By the House Judiciary Committee

AS 41.45.100 is amended by adding a subsection to read:

(b) the exemption from any property tax or special assessment for capital improvements shall not apply to any land within ~~an organized borough or~~ municipality with taxing powers unless the governing body of that borough or municipality has provided for the exemption by ordinance.

HB

221

Brown - 3889

3/16/77

Judiciary Committee Meeting

~~HB76~~

Gardiner
Miles
Reed

Spaeking
Dankworth.

0730 HB19 -

120 ft on Tape.

Miller — testimony

① primary gen. people have voice

② secondary reason

└ same candidates — or other representatives come to state

└ primary — would hopefully draw candidates to the state.

Supported by Gordon Evans.

CSHB 19.

20 2nd Tuesday in April — available nationwide is prior to state conventions.

20 made by Lt Gov. — sole discretion.

3/16/77

Judiciary Committee. Meeting

cut off date - first Tuesday in March
w/drawal date second Tuesday in March.

Delegates p.3 -

Fiscal Note ~~$200,000.00~~ 274,000.00
over 4 years -

Sally Ann
HB19 Polly - director of elections

problem deadlines - worked
ok in the ~~HB~~ CSHB 19

fiscal note 274,000.00 baseden
last election
as written in committee substitute
machinery will work.

Dankworth question - should it be on
a referendum -
Miller - no - too small of a price
tag - we are here to make decisions.

for. { Speaking - move bill out of committee
Dankworth
Miles
Gardiner
Rudd

3/16/77

0755
800

HB 271

Lathin -

action — { get A.G. opinion
and draft a committee report.

decision redraft — of B.

Open Bill Night

HCR 31

Held for committee substitute.

CSHB 71 — ~~the~~ brought up.

moved out —

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 17, 1977

Minutes
March 16, 1977
7:00 p.m.

Present at the meeting were Chairman Gardiner, Vice Chairman Miles, Rep. Rudd, Rep. Specking, Rep. Dankworth, Rep. Brown appeared late. Absent was Rep. Eliason..

The Committee took up HB 19, relating to preferrential presidential primary elections. Testimony was given by the primary sponsor, Rep. Miller. Rep. Miller outlined some of the major considerations behind the bill. One that would give the people of the State of Alaska a voice in the choosing of their parties presidential nominee, and secondly it would hopefully be an insentive for candidates or high Representatives of candidates to come to this State prior to the nominating conventions and would give the people of the State of Alaska an opportunity to learn more about the candidates. HB 19

Ms. Polley, Director of Elections also testified on the bill relating some problems with the original bill regarding the deadline set out that the elections committee could not physically meet. But that the CS for HB 19 which was substituted in State Affairs Committee was acceptable to the Dir. of Elections and that the present machinery as set out would work. She also noted that the fiscal note given on this bill was 274,000 dollars based upon the last election.

Motion to move the bill out of Committee was made and passed and the bill was referred to the Rules Committee for placement on the House Calendar.

HB 221

HB 221 Relating to the Impeachment of Civil Officers, was considered. Rep. Lethin testified in favor of the bill. After some discussion paragraph (b) was rewritten as a CS. There was also a request by the Committee for an AG's opinion on the bill prior to taking any further action. The bill was kept in Committee until receipt of the AG's opinion.

HCR 31 Was considered by the Committee although it was not on the Calendar. Relating to the inclusion of a correctional industry study in any studies done on correctional institutes by the executive, judicial, or legislative branches. The Committee made two amendments to the wording of the resolution and then moved the resolution out of Committee for transmission to the Rules Committee. HCR 31

CSHB 71 Was brought up, relating to biodigradeable shellfish pots. After a brief discussion, the bill was moved out of the Committee to CSHB71 the rules Committee.

The Committee adjourned at approximately 8:45.

Copy taken to Bill Berry 3/17 Walker

Hand for CS

Introduced: 2/16/77
Referred: Judiciary

BY LETHIN, BENNETT, BRADLEY, CARPENTER, DANKWORTH, HAYES, KELLY, MCKINNON, MALONE, MEEKINS AND SWANSON

IN THE HOUSE

CS HOUSE BILL NO. 221

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the impeachment of civil officers."

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

* Section 1. AS 39.10 is amended by adding a new section to read:

Sec. 39.10.020. IMPEACHMENT. (a) A civil officer appointed by the governor and confirmed by the legislature is subject to impeachment for malfeasance or misfeasance in the performance of his official duties. Any impeachment shall be under art. II, sec. 20 of the Constitution of the State of Alaska.

(b) When an executive department expends public funds beyond the amount authorized by legislative appropriation, malfeasance or misfeasance on the part of the principal executive officer may be presumed.

(b) Use of public funds beyond the amount authorized by the legislative appropriation may be grounds for finding malfeasance or misfeasance on the part of the ~~principal executive~~ civil officer.
responsible civil

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 30, 1977

MEMO

TO: Judiciary Committee

FROM: Staff

re; HB 221

At the last Committee meeting a request was made for an Attorney General's opinions regarding the effect of enacting an impeachment section such as described in HB 221.

Assistant Attorney General Pegues is drafting such an opinion and will prepared in the next day or two but we had a general discussion of the issue on 3/29/77.

Basicly its our mutual feelings that enactment of any provision dealing with impeachment which attempts to further define the constitutional provisions of impeachment in Article 2 Seciton 20, will be interpreted as a limiting provision.

For example, in the proposed HB 221 paragraph (a), civil officer is limited to those persons appointed by the Governor and confirmed by Legislature, therefore all other division heads, directors and other top ranking officials who are not subject to confirmation by the Legislature are specifically excluded from impeachment by this statute.

The terms malfeasance or misfeasance are introduced into the concept of impeachment which is not within the constitutional provision and could also be interpreted as a further limiting feature.

The Committee substituted language for description of misuse of public funds as a grounds for malfeasance or misfeasance and is possibly another limiting factor in the instance that that is a description or an example of what the Legislature was contemplating at the time.

The general opinion of both the AG's office and myself is that the area of impeachment should not be infringed upon without a great deal of study. There were some works compiled during the Nixon Impeachment process by the Congressional staff dealing with the comprehensive history of the impeachment concept both in the United States and in the Parlimentary Governments. Perhaps some further research work should be done by one obtaining those works and corresponding with other States regarding the impeachment process for procedure they have provided for in their constitution.

Walker

Introduced: 2/16/77
Referred: Judiciary

BY LETHIN, BENNETT, BRADLEY, CARPENTER, DANKWORTH, HAYES, KELLY, MCKINNON, MALONE, MEEKINS AND SWANSON

IN THE HOUSE

HOUSE BILL NO. 221

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

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For an Act entitled: "An Act relating to the impeachment of civil officers."

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(b) When an executive department intentionally expends public funds beyond the amount authorized by legislative appropriation, malfeasance or misfeasance on the part of the principal executive officer may be presumed.

grounds for impeachment

responsible for others actions but not "knowing"

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT Legis

ATTENTION Rep Hardcastle

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

file in HB221

FROM:
MAIL STATION NUMBER 3100

DEPARTMENT Legis

BY Rep Lethin DATE

02-002 (REV.10/73)

Alaska State Legislature

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

TO: All House Members

DATE: April 11, 1977

FROM: Kris W. Lethin
Representative K. W. L.

SUBJECT: HB 221
Memo of 3/30/77 to
Judiciary Committee
from Staff

By adding the words, "but not limited to", to paragraph (a) of HB 221, there will not be a limiting effect on Article II, section 20, of the Constitution of the State of Alaska.

Ie:

(a) A civil officer is subject to impeachment for malfeasance or misfeasance in the performance of his official duties. A civil office. defined as, but not limited to, an employee appointed by t.. governor and confirmed by the legislature.

attachment: HB 221
subject memo

es

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 30, 1977

MEMO

TO: Judiciary Committee

FROM: Staff

re; HB 221

At the last Committee meeting a request was made for an Attorney General's opinions regarding the effect of enacting an impeachment section such as described in HB 221.

Assistant Attorney General Pegues is drafting such an opinion and will prepared in the next day or two but we had a general discussion of the issue on 3/29/77.

Basicly its our mutual feelings that enactment of any provision dealing with impeachment which attempts to further define the constitutional provisions of impeachment in Article 2 Seciton 20, will be interpreted as a limiting provision.

For example, in the proposed HB 221 paragraph (a), civil officer is limited to those persons appointed by the Governor and confirmed by Legislature, therefore all other division heads, directors and other top ranking officials who are not subject to confirmation by the Legislature are specifically excluded from impeachment by this statute.

The terms malfeasance or misfeasance are introduced into the concept of impeachment which is not within the constitutional provision and could also be interpreted as a further limiting feature.

The Committee substituted language for description of misuse of public funds as a grounds for malfeasance or misfeasance and is possibly another limiting factor in the instance that that is a description or an example of what the Legislature was contemplating at the time.

The general opinion of both the AG's office and myself is that the area of impeachment should not be infringed upon without a great deal of study. There were some works compiled during the Nixon Impeachment process by the Congressional staff dealing with the comprehensive history of the impeachment concept both in the United States and in the Parlimentary Governments. Perhaps some further research work should be done by one obtaining those works and corresponding with other States regarding the impeachment process for procedure they have provided for in their constitution.

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HB
230

HB 230

February 18, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making membership and procedural changes in the statutes creating and delineating the authority of the Governor's Commission on the Administration of Justice, to bring those statutes into compliance with recent changes in the federal Omnibus Crime Control and Safe Streets Act of 1968. The Governor's Commission on the Administration of Justice and its staff, the Criminal Justice Planning Agency, as well as a number of municipal crime prevention and control programs, are directly funded through the Onmibus Act, which requires state planning agencies to meet certain base-line criteria established by the federal government.

The amendments which I am now proposing expand membership of the commission from 13 to 15 members to include the administrative director of courts and a judge of the superior court to be selected by me from a list of nominees submitted by the chief justice of the Supreme Court of Alaska. The bill also emphasizes the commission's expanded role in furnishing municipalities and state agencies with various forms of technical assistance in conducting experimental crime control programs and in program planning.

Sincerely,

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 230
Title An Act relating to the Governor's Commission on the Administration of Justice
Requested by the Governor Date 2/7/77

II. FISCAL DETAIL
Agency Affected OFFICE OF THE GOVERNOR
Program Category Affected ADMINISTRATION OF JUSTICE
Budget Request Unit(s) Affected CRIMINAL JUSTICE PLANNING AGENCY

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	.7	2.5	2.6	2.7	2.9	3.1
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	COMMODITIES	.1	.1	.2	.2	.2	.1
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	0.8	2.6	2.8	2.9	3.1	3.2

FUNDING (Thousands of Dollars)

GENERAL FUND	.3	.8	.9	.9	1.0	1.0
FEDERAL FUNDS	.5	1.8	1.9	2.0	2.1	2.2
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See Attached for Fiscal detail.

IV. DATE February 17, 1977 PREPARED BY Charles G. Adams, Jr.
AGENCY Criminal Justice Planning Agency
PHONE 465-3535

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

TRAVEL		77	78	79	80	81	82
IN-STATE							
2 - Anchorage/Ketchikan RT. $412		412	-	-	-	-	-
8 - Anchorage/Juneau RT $1264		-	1,264	1,327	1,394	1,463	1,536
LIMO:							
2 X $7 Round Trip	$14	14	-	-	-	-	-
8 X $7	$56	-	56	59	62	65	68
PER DIEM:							
2 X $50/day X 3 days	$300	300	-	-	-	-	-
8 X $50/day X 3 days	$1200	-	1,200	1,260	1,323	1,389	1,459
TOTAL TRAVEL		726	2,520	2,646	2,779	2,917	3,063
COMMODITIES							
POSTAGE:							
2 X $2 each	$4	4	-	-	-	-	-
8 X $2 each	$16	-	16	17	18	19	20
ZEROX:							
.07 /copy X 200 Copies X 2	$28	28	-	-	-	-	-
.07 /copy X 200 Copies X 8	$112	-	112	118	123	130	136
TOTAL COMMODITIES		32	128	135	141	149	156
TOTAL		$758	$2,648	$2.781	2,920	3,066	3,219

NOTE: 5% Inflation calculated in each year beginning with FY79.
Funding ratio calculated at FY78 budget submission

69% Federal
31% Required General Fund

HB
237

March 14, 1977

MEMO

To: Terry

From: Chottie C

O.K.

I called Art Snowden in Anchorage regarding HB278 and HB 237.

Re: HB 278- Providing for geographic cost-of-living salary differentials for judicial officers

Mr. Snowden understood that this bill would be taken up again at the time that the other salary bills are considered. If desired, he'll have Susan Burke do further research on it. Otherwise, he understood that the committee had basically already cleaned it up with a few minor changes.

Re: HB 237- Appointment and compensation of local registrars and deputy local registrars of vital statistics

This bill is presently being negotiated with the Dept. of Health and Social Services. Mr. Snowden suggested that you just hold this in the drawer and perhaps try to move it early next year. (This is what he would prefer at this time.)

House Judiciary
March 8, 1977

The meeting was called to order at 3:00 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason, Brown and Specking. Mrs. Rudd was absent.

HB 112 Appropriation for capital improvements within the court system HB 112

Mr. Miles explained the memo that he had written to the committee regarding HB 112.

Art Snowden, Director of the Court System, explained that the costs indicated in this bill were provided on the basis of consultation with the Department of Public Works.

Mr. Brown reminded the committee that the $710,000 figure for the Fairbanks Court Building had been amended to be reduced to $60,000.

Mr. Miles asked if these figures in the bill are still valid. Rick Barrier, Manager of Fiscal Operations for the Court System, answered that "yes", they were.

There was a general discussion about other court building projects and their costs.

Mr. Brown moved that the Dillingham figure be changed to 1,063,027 (instead of 1,458,000). He also moved that a letter be sent to the Finance Committee with the bill to have them consider a lease-back program for the Dillingham Court Building.

The committee generally feels that the costs are unrealistic. The Finance Committee will probably adjust the figures. The bill was moved out of committee. Gardiner will write a letter to the Finance Committee- to accompany the bill- saying that the Judiciary Committee felt that the figures provided by Public Works were unrealistic.

HB 279 Judicial compensation HB 279

Art Snowden explained the purpose of this bill as being to make it so that all judges are paid the same salary, rather than having the salaries vary from one part of the state to another.

This bill does essentially the same thing as the salary commission recommendation. Only one or the other will be adopted.

This bill will be taken up again at a later date with similar Malone bills.

HB 278 Geographic cost of living salary differentials for judicial officers HB 278

Art Snowden explained that the purpose of this bill would be to provide judges with a cost of living differential, like other state employees. It provides the same % cost of living increase as for other state employees.

It was indicated that the 7.5 % for the retirement system wouldn't apply to judges presently sitting, but it would apply to judges coming on after the effective date of the act.

Susan Burke, Staff Counsel for the Court System, also answered some questions about the bill.

Mr. Brown objected to the title of the bill. He felt it was not broad enough to cover section 4 on retirement. The committee agreed.

Mr. Brown indicated that Section 25.25.049 may be redundant with other law. If not, the interest rate referred to in the bill needs to be more specific.

This bill will be considered again at a later date.

HB 238 Inquiries into cause of death HB 238

Susan Burke explained the intent of the bill. She said, however, that this was the first time that she had seen section 2... and she doesn't feel that a coroner's inquest should be completely illiminated (which line 19 would do).

Mr. Eliason moved that section 2 of the bill be deleted. He also moved the bill out of committee. Both motions passed and the bill was moved out of committee.

HB 237 Appointment and compensation of registrars of vital statistics HB 237

Art Snowden and Susan Burke explained the purpose of the bill.

Mr. Gardiner requested that Rick Barrier, Manager of fiscal operations for the court system, get together with the Department of Health and Social Services to come up with a fiscal note for this bill.

Lois Jund, Deputy Commissioner for the Department of Health and Social Services, was here but indicated that they would need more information about the bill before being able to testify.

This bill will come up again later.

The meeting was adjourned at 4:20 p.m.

HB
240

members files
HB 240

Box 907
Nome, Alaska 99762
May 19, 1978

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Dear Rep. Gardiner: regarding House Bill 240

It is my understanding that portions of HB 240 deal with concerns that directly affect some of the situations in Western Alaska, with specific reference to:

1. Provide for increased penatties for bootlegging and

2. Provide compensation to communities voting themselves dry for loss of alcoholic beverage sales tax revenues.

While the legislature plays politics on this issue, persons are dying from uncontrolled alcohol abuse, both in Bethel, where bootlegging is a problem, and in Nome, where a certain portion of the alcohol industry has thought it was "above the law", so to speak.

Bethel has voted "no sale" by a margin of 3 to 1 because it is the only way to control the liquor industry. It is a sad commentary on the legislature that we have not been able to provide the people with more effective tools of control. Nome is considering going the same route and without the above mentioned changes in state law, it is probable that bootlegging and loss of sales tax revenue will hurt the city economically.

It would be to the advantage of the industry to clean up some of these situations, as many of the people are very, very desperate.

I would hope that you, in your capacity of chairman of the Judiciary Committee, would give this some special attention in the closing days of the legislature. It would help solve some human problems in Alaska.

Sincerely,

John J. Shaffer

John J. Shaffer

cc: Bill Miles

Lisa Rudd

House Judiciary
March 7, 1977

The meeting was called to order at 3:10 p.m. by Vice-Chairman, Miles. Members present were Miles, Dankworth, Eliason and Rudd. Mr. Specking and Mr. Brown were absent. Mr. Gardiner came in to the meeting later.

HB 240 Alcoholic beverages

HB 240

Frank Williamson, Commissioner of Health and Social Services, was here to explain the purpose of and provisions in the bill. He stated that this bill is a response of the Dept. of H & SS and the state government to offer to local communities some mechanism where-by they may control their alcohol problems at a local level.

Bob Cole, Coordinator of the Office of Alcoholism, and Louis Snapper were also here to explain the bill and to answer questions.

There was a lengthy discussion and question/answer session. This bill will come up for consideration again at a later date.

The meeting was adjourned at 4:40 p.m.

HB 240

contact Jim Rolle
Ak Muni League

1 L

586-1325

HB 240

February 18, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill dealing with various aspects of and problems related to alcoholic beverages. This bill is based on several recommendations of the Inter-departmental Coordinating Committee on alcoholism (created by AS 47.37.050). Since excessive consumption of alcoholic beverages is the root of many of Alaska's most serious social, criminal, and economic problems, the general purpose of the bill is the reduction of that consumption.

The major elements of this bill are :

-- A new class of license, a limited community liquor license, would be created and added to the ballot in local option elections. The holder would be permitted to sell at a retail store no more than 2.4 wine gallons a day to any one customer, with orders being placed two weeks in advance of delivery. Local option elections would be exten d and clarified for cities, organized boroughs, unified municipalities, and election pre-cincts in the unorganized borough.

-- The holder of a retail license would not be permitted to sell liquor which has been ordered by mail or telephone from a munici-pality or precinct which has prohibited its sale or a municipality which holds a limited community license, if the governing body (or the electorate of the precinct) votes in oppos tion to mail and telephone sales and notifies the Alcoholic Beverage Control Board of its position.

-- The bill authorizes issuance of an in-flight catering license for selling liquor with prepared meals aloft. This fills a gap in existing law.

-- Provision would be made by this measure for compensation by the state to municipalities which have prohibited the sale of alcoholic beverages. This will, at least partially, compensate for municipal loss of revenue resulting from loss of sales tax due to that prohibition. I expect this provision to be funded from the alcohol excise tax increase that I have proposed in HB 196.

-- The bill would prohibit holders of all types of license, except manufacturing and wholesaling, from advertising in Alaska newspapers and magazines, or on broadcasting stations or community cable systems in the state, but would not seek to limit national advertising of alcoholic beverages.

-- The possession of more than one case of hard liquor and two of beer or wine would be made a misdemeanor in areas which have prohibited the sale of liquor or have a limited community liquor license. The sale of intoxicating liquor in an area where it has been prohibited by local option would be made a felony instead of a misdemeanor, with the ceiling on possible fines raised to $30,000, and provision would be made for the seizure and forfeiture of conveyances used to transport such illegally sold liquor.

-- Other features of the bill make minor amendments to AS 4, such as removing the constitutional infirmity of AS 04.15.090 which currently only prohibits females from soliciting drinks.

Sincerely,

Jay S. Hammond
Governor

ELEMENTS OF THE GOVERNOR'S ALCOHOL PACKAGE

EXCISE TAX-- HB 196/SB167

A conservative estimate is that alcohol abuse cost the state over $17 million last year. Alcohol excise taxes generated only $7 million. This bill would make up the difference. The price for a fifth of liquor would be up 50¢, a fifth of light wine up 30¢, heavy wine up 50¢ a fifth, and a six-pack of beer up 28¢. Studies have said that a price rise far higher than this would be necessary to significantly reduce alcohol sales.

In HB 241/SB ___ the Governor proposes to allocate an additional $1.5 million for prevention, education, and treatment programs for alcohol abuse and alcoholism. Note that should the appropriations bill pass and this tax measure not pass the Governor will not be able to sign the appropriations bill.

-- SB 76

This bill links excise taxes, including these alcohol taxes, to the consumer price index. The legislature retains the right to disapprove increases.

SALES TAX--HB 232

This bill would allow municipalities to tax beverage alcohol at a rate higher than other commodities. This should encourage local treatment and begin to recompense local governments for their alcohol-caused expenses.

ALCOHOL LAW-- HB 240/SB ___ (Title 4)

Local Option Election

Upon petition of 35% of voters, or action of the governing body, an election will be held which will allow the voters to choose the following alcohol options.

--Completely restrict the sale of beverage alcohol in the community. (*Secs. 13 & 14)

--Completely restrict sale, plus ban shipment of mail or telephone ordered alcohol. (*Sec. 4)

--Have a Limited Community Liquor License which would allow the community to run a liquor store which would only be allowed to sell a limited amount (equivalent to a case of fifths) of alcohol which had been ordered two weeks in advance. (*Sec. 7)

--Have a Community Liquor License which would allow the community to run its own liquor store. The advantages are that under community management, the store may limit sales, and control sale hours to minimize abuses of alcohol and binge drinking. The profits may be used by the community for any purpose, including local treatment and alcohol-caused costs. (*Sec. 6)

Dry Communities

Should a town vote itself dry (no type of liquor store) or if a town has already voted dry, the following things will happen.

-- Compensation: Communities which limit liquor sales should not have to pay the penalty of lost sales tax revenue. Communities which are presumed-dry should have the benefit of more effective alcohol law enforcement. Therefore, the state will pay each voted dry community $10 per resident. (*Sec. 14-end)

-- Possession Limits: In order to reduce bootlegging no person in a dry community will be allowed to possess more than the equivalent of a case of fifths of liquor and 4.5 gallons of wine and beer. (*Sec. 18)

-- Illegal Sale Penalties: Sale in violation of local option (bootlegging) will be punished as a felony with a maximum sentence of 6 years and fine of $30,000; up from one year and $5,000. It is thought that the present penalties are so low as to be an acceptable cost of doing business to bootleggers making up to $100,000 a year. (*Sec. 19)

-- Confiscation of Vehicles Used in Illegal Sale: As a further deterrent to bootleggers using automobiles, aircraft or boats, the state may

sieze a vehicle used in bootlegging activities. Upon conviction of the offender the court may order the conveyance transfered to the community where the offence took place, or to the state. Owners of common carriers having no knowledge of the illegal transaction and mortgage or lien holders will be protected. (*Sec. 20)

Public Notice

The requirements for public notice when a liquor license is applied for or renewed are changed from advertised notices to posted notices unless the A.B.C. Board determines that advertised notices are in the public interest. Other technical changes are included in this section. (*Sec. 8)

In-Flight Licenses

The bill authorizes the issuance of license to permit sale of alcohol aloft. This fills a gap in existing law. (*Sec. 5)

Advertising Ban

Holders of liquor licenses may not advertise alcohol in any newspaper, magazine or on any cable or broadcast television or radio station. (*Sec. 15)

Solicitation

This section now makes it illegal for men as well as women to solicit the purchase of alcoholic beverages at licensed establishments. (*Sec. 16)

APPROPRIATIONS FOR ALCOHOL TREATMENT HB 241

This measure would spend $1.5 million of the money generated by the excise taxes of HB 196 on prevention, education, and treatment programs for alcohol abuse and alcoholism. These funds will be administered by the Office of Alcoholism, DHSS.

OFFICES OF ALCOHOLISM AND DRUG ABUSE COMBINED

--Alcohol and Drug Abuse offices will be combined, with a combined budget. Grantees in the field will remain separate.

--Advisory boards will be combined from current nine member boards into a single nine member board.

--Office of Alcoholism's current ambiguous "approval" authority over treatment facilities will be changed to a specific licensing authority.

--Involuntary commitments to treatment facilities will be simplified by allowing the court to commit directly to a licensed facility rather than to the Office of Alcoholism.

DRAFT

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DRAFT

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 16, 1977

Dick Whittaker
#4 Creek Street
Ketchikan, Alaska 99901

Dear Dick:

Thank you for the letter in regard to liquor licensing statutes. I have HB 240- introduced by the Governor- in the committee. This bill revamps many of the liquor license laws, especially relating to the rural areas. The problem seems to be that the Administration who drew this bill up did not confer enough with rural legislators. Even though the bill is designed to help the liquor problem in the rural areas, the rural legislators are at this time opposed to it.

I am not sure if the bill will go anyplace this year. I will bring the issue up of de-regulating liquor in larger municipalities if the bill is before the committee again.

Sincerely,

Terry Gardiner
State Representative
Alaska Legislature

LAW OFFICES

RICHARD WHITTAKER
PETER R. ELLIS
JOHN L. SUND

ELLIS, SUND & WHITTAKER, INC.

NO. 4 CREEK STREET
KETCHIKAN, ALASKA 99901
907-225-6174 or 907-225-5333
ZENITH 4444

CATHY V. CANORRO*
ANTHONY B. CANORRO
DENNIS L. McCARTY

*Washington Bar Only

11 March 1977

House of Representatives
Pouch V
State Capital
Juneau, Alaska 99801

Attn: The Honorable Terry Gardiner

Dear Terry:

Peter asked me to write you with a suggestion that at such time as the Liquor Licensing Statutes are being revamped as I understand they are now, you take a look at the possibility of easing restrictions in the larger communities. The reason is that they are generally able to regulate and restrict and care for the problems of alcohol without the need for State Control. Peter would prefer amending the section in the code which provides for a restriction on the number of licenses as one for every 1,500 population, so as to exempt municipalities of 5000 population or more.

My own view, being very involved in the war against alcoholism is that we would be very much ahead in getting rid of the vested interests in the alcohol business by deregulating the number of licenses everywhere and letting the market apply comply so there wouldn't be the control by the beverage industry that there is now.

Hope to see you soon to discuss this and other matters.

Sincerely yours,

ELLIS, SUND & WHITTAKER, INC.

By
Richard Whittaker

RW:sjs

Restriction on Municipal stores to jerk license if they sell to drunks

---

Sell liquor but community cannot make profit off the store

Private licenses - but with restrictions

---

1. investigate
2. Police

Regs + stat → and enforcement

Big Problem

What commitment of state to enforce

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 240
Title An Act Relating to Alcoholic Beverages, and Providing for an Effective Date
Requested by Office of the Governor Date February 17, 1977

Note: The information shown on this fiscal note represents a compilation of fiscal notes submitted by the effected agencies.

II. FISCAL DETAIL
Agency Affected Office of the Governor, Departments of Revenue and Community and Regional Affairs
Program Category Affected General Government, Public Protection, Development
Budget Request Unit(s) Affected Elections, ABC Board, Alcohol Revenue Sharing (new)

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		60.0	63.0	66.1	69.4	
200	TRAVEL		9.0	9.0	9.0	9.0	
300	CONTRACTUAL		28.5	28.0	3.0	3.0	
400	COMMODITIES		.8	1.0	1.0	1.0	
500	EQUIPMENT		2.5				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.		53.0	224.2	414.6	439.5	
	TOTAL		153.8	325.2	493.7	521.9	

FUNDING (Thousands of Dollars)

GENERAL FUND		153.8	325.2	493.7	521.9	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		3	0	0	0	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Major Assumptions:

1) Consumer Price Index will increase annually at 6%.
2) Seven cities (Bethel, Eagle, Klawock, Nondalton, Ouzinkie, Port Lions, Selawick) will be eligible for compensation for lost revenue in FY 78 by virtue of their current legal status with regard to alcohol sales.
3) Fifty communities, with an average population of 300 people each, will vote themselves "dry" and become eligible for lost revenue compensation in each of fiscal years 1978 and 1979.
4) No additional districts will vote themselves "dry" after FY 79.
5) Eligibility for compensation for lost revenue due to "dry" status will commence on July 1st following the date of the election of such status by a community.
6) The population of the communities which opt for "dry" status will not, on the average, increase during the period of time covered by this fiscal note.
7) Each precinct election is estimated to cost $500 with fifty such elections estimated as being required in each of two fiscal years, FY 78 and FY 79.

IV. DATE February 17, 1977 PREPARED BY Ron Lind (con't on attached page)
AGENCY Division of Budget and Management
PHONE 465-2213

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

B. Additional Personnel Required:

The Alcoholic Beverage Control Board staff will require two additional ABC Investigator positions to enforce the provisions of this act ($22.8 per position plus travel and equipment).

Correspondence, licensing and clerk-typist support for the enforcement of the provisions of this Act require that an additional clerk-typist III position be assigned to the ABC board staff ($14.4 plus equipment).

C. Estimated Budgetary Impact by Year and Budget Request Unit

		BUDGET REQUEST UNIT			
	Line Item	Alcohol Revenue Sharing*	ABC Board	Elections	Total
FY 78	Personal Services		60.0		60.0
	Travel		9.0		9.0
	Contractual Svcs		3.5	25.0	28.5
	Commodities		.8		.8
	Equipment		2.5		2.5
	Grants	53.0			53.0
	TOTAL	53.0	75.8	25.0	153.8
FY 79	Personal Services		63.0		63.0
	Travel		9.0		9.0
	Contractual Svcs		3.0	25.0	28.0
	Commodities		1.0		1.0
	Equipment				
	Grants	224.2			224.2
	TOTAL	224.2	76.0	25.0	325.2
FY 80	Personal Services		66.1		66.1
	Travel		9.0		9.0
	Contractual Svcs		3.0		3.0
	Commodities		1.0		1.0
	Equipment				
	Grants	414.6			414.6
	TOTAL	414.6	79.1		493.7
FY 81	Personal Services		69.4		69.4
	Travel		9.0		9.0
	Contractual Svcs		3.0		3.0
	Commodities		1.0		1.0
	Equipment				
	Grants	439.5			439.5
	TOTAL	439.5	82.4		521.9

* New BRU

OFFICE OF THE GOVERNOR
JUNEAU

JAY S. HAMMOND
GOVERNOR

FOR INFORMATION CONTACT:
Scott Foster, Press Secretary
Office of the Governor
Pouch A Juneau, Alaska 99811
OR PHONE: 907-465-3500

GOVERNOR HAMMOND'S STATEMENT ON INTRODUCTION OF ALCOHOL ABUSE PACKAGE TO LEGISLATURE
FEBRUARY 18, 1977
#33

file in HB 240 & by committee file.

"LAST SPRING I APPOINTED A CABINET-LEVEL COORDINATING COMMITTEE TO STUDY THE PROBLEMS OF ALCOHOL ABUSE IN ALASKA.

THE COMMITTEE'S FINDINGS ARE GRIM, THOUGH NOT REALLY SURPRISING. IN 1975, EXCESSIVE DRINKING WAS FOUND TO BE INVOLVED IN: 45% OF ALL REPORTED CASES OF CHILD NEGLECT; 25% OF ALL REPORTED CASES OF CHILD ABUSE; 45% OF ALL FATALITIES FROM TRAFFIC ACCIDENTS; 60% OF ALL FATALITIES FROM BOATING ACCIDENTS; AND 30% OF ALL FATALITIES FROM FIRES.

ALCOHOL ABUSE HAS AN ENORMOUS IMPACT ON THE CRIMINAL JUSTICE SYSTEM: OVER 30% OF THE WORK OF STATE TROOPERS AND STATE PROSECUTORS, AND OVER 60% OF THE WORK IN THE PUBLIC DEFENDER AGENCY, IS TRACEABLE TO ALCOHOL-RELATED INCIDENTS, INCLUDING VIOLENT CRIME, DISORDERLY CONDUCT, DRUNK DRIVING, ALCOHOL CODE VIOLATIONS, AND SO ON. ALCOHOL HAS ADDED COMPARABLE COSTS TO THE STATE'S COURTS AND JAILS. IT ADDS SIGNIFICANTLY TO THE COST OF WELFARE PROGRAMS.

"IN ADDITION, THE COMMITTEE FOUND THAT, ALTHOUGH THE STATE RECEIVED OVER $7 MILLION IN ALCOHOL EXCISE TAXES AND LICENSE FEES IN 1975, ALCOHOL-RELATED STATE GENERAL FUND EXPENDITURES WERE IN EXCESS OF $17 MILLION. THIS FIGURE INCLUDES ALCOHOL-RELATED COSTS INCURRED IN ALCOHOLISM TREATMENT, SOCIAL SERVICES, WELFARE PROGRAMS, THE CRIMINAL JUSTICE SYSTEM, AND OTHER PROGRAMS.

"FINALLY, ALASKANS DO INDEED DRINK A LOT AND ARE DRINKING MORE ALL THE TIME. CURRENTLY ALASKANS DRINK 57% MORE ALCOHOL PER CAPITA THAN THE NATIONAL AVERAGE. 80% MORE ALCOHOL IS CONSUMED

OBSERVATION THAT SOCIETIES WITH LOW PER CAPITAL ALCOHOL CONSUMPTION GENERALLY EXPERIENCE LOW RATES OF EXCESSIVE DRINKING, WHILE SOCIETIES WITH HIGH PER CAPITA CONSUMPTION SHOW CORRESPONDINGLY HIGH RATES OF EXCESSIVE DRINKING. THE COMMITTEE CONCLUDED THAT INCREASINGLY HEAVY PER CAPITA ALCOHOL CONSUMPTION CARRIES WITH IT INCREASINGLY HEAVY IMPACTS OF ALCOHOL ABUSE AND RELATED PROBLEMS.

"I AM INTRODUCING LEGISLATION IN RESPONSE TO THESE FINDINGS, IN THE HOPE THAT BY TAKING POSITIVE ACTION WE CAN, AS A SOCIETY, REDUCE THE CHRONICALLY DEBILITATING EFFECTS OF ALCOHOL.

"HOUSE BILL 196, WHICH I INTRODUCED ON FEBRUARY 9, WILL RAISE $10 MILLION ADDITIONAL REVENUE FROM ALCOHOL EXCISE TAXES AND LICENSE FEES, TO MORE EQUITABLY FUND ALCOHOL-RELATED STATE COSTS AND TO STABILIZE THE OVERALL CONSUMPTION OF ALCOHOL IN ALASKA. I AM PROPOSING TO RAISE THE TAX ON HARD LIQUOR BY 50¢ PER FIFTH; ON BEER BY 28¢ PER 6-PACK; AND ON MOST WINES BY 45¢ PER HALF GALLON. TAX INCREASES OF 2¢ PER SHOT OF HARD LIQUOR AND 5¢ PER CAN OF BEER ARE HARDLY PROHIBITIVE.

"ON JANUARY 24, I INTRODUCED A BILL TO TIE EXCISE TAXES ON MOTOR FUELS, CIGARETTES, AND ALCOHOL TO THE CONSUMER PRICE INDEX. THE EXCISE TAX ON ALCOHOL HAS REMAINED AT THE SAME DOLLAR AMOUNT PER GALLON SINCE 1961. STATE COSTS RISE WITH INFLATION. THIS BILL WOULD PROVIDE FOR EXCISE TAX REVENUES TO RISE WITH INFLATION AS WELL.

"I AM NOW SUBMITTING FURTHER LEGISLATION AIMED AT PROVIDING BUSH COMMUNITITES WITH ADDITIONAL LEGAL RECOURSE IN TRYING TO COPE WITH THEIR OFTEN UNIQUE AND SEVERE ALCOHOL PROBLEMS.

"FIRST, WE PROPOSE THAT MUNICIPALITIES BE EMPOWERED TO LEVY ANY SALES TAX RATE ON ALCOHOL THEY CHOOSE; WHETHER FOR PURPOSES OF MEETING LOCAL ALCOHOL-RELATED COSTS, OR FOR FURTHER INCREASING THE PRICE, OR BOTH.

RETAILERS IN ALL IN-STATE PUBLICATIONS, AND ON ALL IN-STATE RADIO AND TELEVISION PROGRAMMING. THERE IS PRECEDENT FOR PUBLIC RESTRICTIONS ON ADVERTISING AND THE DEMAND FOR ALCOHOL IN ALASKA HAS LITTLE NEED OF MEDIA STIMULATION.

"CONCERNING DRY COMMUNITIES, MY PROPOSALS ARE AS FOLLOWS:

1) PROVIDE A LOCAL OPTION FOR RESIDENTS OF A DRY TOWN TO BAN IF THEY CHOOSE MAIL ORDER AND TELEPHONE ORDER SHIPMENTS OF ALCOHOL INTO THEIR COMMUNITY.

2) PROHIBIT THE POSSESSION IN DRY COMMUNITIES OF LARGE AMOUNTS OF ALCOHOL, IN ORDER TO REDUCE BOOTLEGGING.

3) CHANGE THE CRIME OF BOOTLEGGING IN DRY COMMUNTIES FROM A MISDEMEANOR TO A FELONY, AND ALLOW THE CONFISCATION OF CARS, TAXI CABS AND AIRPLANES INVOLVED IN ILLEGAL SALES.

4) ALLOW COMMUNITITES TO SELL PACKAGED LIQUOR UNDER A NEW CATEGORY OF LICENSE THAT CREATES A TWO-WEEK TIME LAG BETWEEN ORDER AND DELIVERY.

5) COMPENSATE TOWNS AND VILLAGES FOR ALCOHOL SALES TAX REVENUE LOST AS A RESULT OF VOTING DRY.

"OUR DESIRE IS TO MAKE IT MORE LIKELY THAT A COMMUNITY VOTING DRY IN RESPONSE TO SERIOUS ALCOHOL PROBLEMS CAN EXPECT A MAJOR REDUCTION IN THE FLOW OF ALCOHOL INTO THE AREA.

"FINALLY, I AM SUBMITTING LEGISLATION TO APPROPRIATE $1.5 MILLION BEYOND THE FY '78 BUDGET REQUEST FOR EXPANDED ALCOHOL ABUSE PREVENTION AND TREATMENT PROGRAMS. THE FUNDS WOULD BE USED PRIMARILY AS FOLLOWS:

PURCHASE AND INSTALLATION OF DETOXIFICATION FACILITIES AT TWELVE NEW LOCATIONS, WITH A REQUIREMENT FOR LOCAL MATCHING FUNDS.

PROVIDE FUNDS FOR OPERATION OF A 30-DAY RESIDENTIAL TREATMENT FACILITY.

PROVIDE FOR A PUBLIC INFORMATION PROGRAM CONDUCTED THROUGH THE MEDIA, AND DEVELOP AN ALCOHOL EDUCATION CURRICULUM FOR PUBLIC SCHOOLS.

AS I HAVE STATED PREVIOUSLY, MY EVENTUAL APPROVAL OF SUCH ADDITIONAL EXPENDITURES WILL DEPEND ON PASSAGE OF ADDITIONAL TAXES BY THE LEGISLATURE TO PAY FOR THEM.

"THE PROPOSALS I HAVE MENTIONED CONSTITUTE A REASONABLE FIRST STEP IN ADDRESSING THE PROBLEMS OF ALCOHOL ABUSE IN ALASKA. SOME WILL FIND THESE PROPOSALS TOO STRONG; THOUGH I MUST ASK THEM WHAT ALTERNATIVES THEY HAVE IN MIND FOR REDUCING OUR ALCOHOL-RELATED PROBLEMS, AND WHAT EVIDENCE EXISTS TO PERSUADE US THAT THE ALTERNATIVES MAY WORK. OTHERS MAY FEEL THAT WHAT WE PROPOSE IS NOT ENOUGH TO SUBSTANTIALLY LOWER THE COSTS OF ALCOHOL ABUSE. MY REPLY IS THAT WE DISAVOW A RETURN TO THE UNWORKABLE EXTREME OF PROHIBITION. WE ARE ATTEMPTING TO FIND A "MIDDLE GROUND" WHICH RECOGNIZES PEOPLE'S RIGHT TO CONSUME ALCOHOL BUT ALSO RECOGNIZES OUR OBLIGATION TO PROTECT THE PUBLIC HEALTH, WELFARE, AND SAFETY AND DO IT IN A COST-EFFECTIVE WAY."

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 18, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Last spring I appointed a coordinating committee to study the problem of alcohol abuse in Alaska. The results of this study are shocking:

- Alaskans drink over half again as much liquor as the average American.

- We drink 80% more alcohol per capita than we did 20 years ago.

Excessive drinking was found to be involved in:

- 45% of all reported cases of child neglect;

- 25% of all reported cases of child abuse;

- 45% of all fatalities from traffic accidents;

- 60% of all fatalities from boating accidents;

- 30% of all fatalities from fires.

In addition, the study found that alcohol abuse has placed a tremendous burden on the criminal justice system: over 30% of the work of the State troopers and State prosecutors is devoted to incidents involving excessive drinking, and over 60% of the work of the Public Defender Agency is traceable to alcohol-related events, such as violent crimes, disorderly conduct and drunk driving.

Alcohol has added comparable costs to the State's courts and jails. It adds greatly to the cost of welfare programs.

The Committee found that alcohol abuse cost the State of Alaska over $17 million in 1975. This includes the cost of alcohol treatment programs as well as the costs to all State agencies dealing with alcohol-related problems. Yet in 1975, the sale of alcohol generated only $7 million from taxes and fees.

As a result of the Committee's work, I am introducing six pieces of legislation this session to combat the massive problem that alcohol causes in our society. Together, these measures will help deter alcohol abuse; require the sale of alcohol to more nearly repay the State for the costs it creates; and strengthen anti-bootlegging laws.

I have proposed that the alcohol excise tax and license fees be increased sufficiently to raise an additional $10 million. House Bill 196 was introduced by me on February 9, 1977; today I have introduced an identical bill in the Senate. I have proposed in SB 76, introduced on January 24, 1977, that the excise tax on alcohol as well as on motor fuel and cigarettes be tied to the Anchorage consumer price index. Under this proposal, the Commissioner of Revenue could, with the concurrence of the legislature, revise the tax rate annually.

I am requesting appropriations totaling $1.5 million for additional alcohol detoxification, treatment, and rehabilitation programs. I believe these expenditures must be funded through the increase in the alcohol excise tax rates which I have proposed.

I am proposing that municipalities be allowed to levy a sales tax on alcohol at a rate higher than that on other commodities.

I am also proposing major revisions to Title 4 of the Alaska Statutes which regulates the sale of alcohol. Among other things, these revisions will:

- reimburse towns and villages for sales tax revenue they may lose as a result of voting "dry"; I expect this provision to be funded from the alcohol excise tax increase that I have proposed;

- allow "dry" communities to vote to ban mail-order and telephone-order shipments of alcohol to the community;

- allow communities to elect to sell packaged liquor under a new category of license that creates a two week time-lag between the order and delivery;

- prohibit the advertising of beverage alcohol;

- prohibit the possession in "dry" communities of large amounts of alcohol;

- change the crime of bootlegging from a misdemeanor to felony and allow the confiscation of cars, boats, and airplanes which are used in bootlegging.

Finally, I propose to simplify and streamline the administration of alcohol-related programs by combining the Office of Alcoholism and the Office of Drug Abuse. Legislation to accomplish this reorgainzation will be introduced in the near future.

The rationale for these measures is spelled out in detail in the report of the Coordinating Committee on Alcoholism, which has been made available to every legislator. Additional documentation is available through the Office of Alcoholism.

If one or more of the measures I have proposed are regarded by some as drastic, I reply that alcohol abuse in Alaska is a drastic problem. A forceful and determined effort must be made to combat it.

Sincerely,

Jay S. Hammond
Governor

HB
274

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/17/77

The meeting was called to order by Chairman Gardiner at 7:00p.m.
Present were: Chairman Gardiner
Vice - Chairman Miles
Rep. Brown
Rep. Specking
Rep. Dankworth

Absent were:

Rep. Eliason
Rep. Rudd

The Committee first took up the salary commission report and heard testimony from Kay Deeble of the Salary Commission. Ms. Deeble briefly went over parts of the report, dealing with the executive and judicial catagories and discussed the three major aspects of legislative provisions dealing with salary, per dium, and vouchers. Ms. Deeble was questioned by the Committee and other Legislators and observes at the meeting regarding specific methods by which they arrived at the per dium recommendation and the vouchery recommendations.

The Committee then heard from LAA Attorney, Dick Bradley, regarding a request that had been made by Chairman Gardiner for a legal opinion dealing with aspects of the Salary Commission report. A three page memo was handed out to the Committee members prior to the meeting in the full report had not been typed as of the time of the meeting but Mr. Bradley gave an oral presentation.

Rep. Swanson testified briefly on HB 8 which would repeal the salary commission and the salary commission recommendations.

Speaker Malone testified on HB 8 and HB 274,275,276,277,278 & 279. Malone testified in favor of repealing the salary commission report with respect to legislative compensation or taking the legislative compensation out of the purview of the salary commission.

Rep. Parr testified in favor of amending the existing law governoring the salary commission but basicly letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.'

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 14, 1977

SUBJECT: Final Report of Salary Commission (W.O. #3646)

TO: Representative Terry Gardiner

FROM: Richard A. Bradley
Legislative Counsel

By your request of March 7, you have requested my comments on the January 18, 1977 report of the Alaska Salary Commission to the Legislature.

Your request asked:

> (1) Do the Salary Commission recommendations follow the law (AS 39.23)? If they do not, set out the questionable areas.
>
> (2) May a resolution approving the request amend the recommendations and condition legislative approval or is the legislature limited to an approval or rejection of the recommendations?

You also asked that I draft a resolution consistent with my conclusions.

An analysis of AS 39.23 is required in order to provide you the advice you request.

AS 39.23.080(c) provides that the Salary Commission will make a

> "final report of its findings and recommendations as to the rate and form of compensation and retirement benefits ... within 10 days after the first regular session of a legislature convenes. The recommendations regarding compensation become effective, retroactive to January 1, only if approved by concurrent resolution before the end of a session. The recommendations regarding retirement become effective if enacted into law by the legislature." (Emphasis added.)

Sec. 80(d) allows the commission to submit amendments to its report, apparently without any limitation as to time, except that a new report is required for a new legislature. Recommendations as to compensation lapse if not affirmatively approved during the first session of each legislature and the law contains no express mechanism for resubmission of proposals regarding compensation to the second session of the legislature of the first recommendations lapse.

Sec. 120 provides the "Policy of the Legislature:"

> It is the policy of the legislature that the commission determine the salary schedule and retirement benefits for public officers based upon equitable relationships being maintained among state positions. (Emphasis added)

In my opinion, the legislature by the enactment of AS 39.23 has divested itself of the authority to set the compensation of the public officers listed in AS 39.23.060. While legislative approval is required, it is by a resolution of relatively low dignity, a concurrent resolution. Uniform Rules, Alaska State Legislature, Rule 51(c). If a concurrent resolution is used, in my opinion the legislature is limited to an approval or disapproval of the recommendations as to compensation. If a recommendation is disapproved, the legislature has in effect directed the commission to resubmit recommendations. I note that §80(d) allows the commission to amend its recommendations and it may clearly amend if a recommendation is rejected.

A more difficult question is presented by the possibility that the legislature may wish to reject some recommendations while approving the remainder. The charge to the commission in §110 of the law is to establish a "schedule" "based upon equitable relationships being maintained among state positions." At least in theory, an approval that is less than total may cause the establishment of inequity among the positions. Nonetheless, in my judgment the legislature may approve or disapprove all the recommendations or it may approve only a part. Note that while in my opinion the legislature retains an option to disapprove recommendations, its failure to approve a recommendation becomes a rejection at the "end of [the] session." Sec. 80(c).

A proposal as to retirement benefits must be adopted by an amendment to the retirement act by law.

I assume that you recognize, moreover, that my opinion as to the limited options that the legislature possesses is neces-

sarily founded on a decision by the legislature to remain within the framework of AS 39.23. The legislature cannot, by the enactment of any law, divest itself of the underlying constitutional prerogative of setting the compensation of the officers listed in AS 39.23.060.

Accordingly, in my opinion, the legislature

(1) must approve a recommendation before it can take effect.

(2) may approve less than all of the recommendations.

(3) may not change a recommendation as to compensation by a concurrent resolution.

(4) may approve a recommendation as to retirement benefits only by amending the retirement law.

My opinion as to the consistency of the Commission's recommendations with AS 39.23, existing law, and the Constitution is contained in a separate memorandum.

RAB:hjd

Amendment of March 2, 1977 to Alaska Salary Commission Final Report.

Amend Page 7, Section 13, Paragraph D to read:

D) Legislators receive an /vouchered/ annual allowance of of /$2500/ $4000 with vouchering of the allowance to begin January 1, 1978.

Amend Page 8, Section 13, Paragraph G to read:

G) Recognizing the need for maintaining constituent contact, each legislator shall be reimbursed at cost, and upon presentation of proof, for one round-trip to his home district during each regular session. The trip is considered to be legislative business and per diem outlined in Pargraph F shall apply.

3/14/77 7pm

— Salary Commission

present
Gardiner
Miles
Dankworth
~~Ellison~~
Specking

Brown

Salary Commission Report
Kay Diebel
Legislative per diems

Calif
New York
Illinois
~~Alaska~~

full time
salaries

if adopted would be eighth

nobody on Commission ever worked in any of the positions for which salary recommendations were made.

Mckinnon.

statute = pay in 12 equal monthly installments

recommendations = pay or not

3/14/77

Salary Commission did not arrive at a figure of four for ~~the~~ legislature but what would ~~be~~ be ~~acceptable~~ to the public.

— arrived at a figure - but it was just a little less than figure just turned down — therefore they lowered.

Vouchering —

office supplies
postage
etc. telephone calls.
not salary

— ~~only~~ 8 State allow - unrestricted, unvouchered.

only item before committee
recommendations -
not appendices
~~Governor~~ not philosophy

Governor. 50,000

① retirement
② ~~Longevity~~ longevity

The act creating salary commission
gave no guidelines

Lt Governor 44,000 ⇒ 47,300

Agst. Commissioner
47,300
not legal or constitutional

~~Agst~~ 43,200
Deputy Comm

Directors -
no change recommended
but salary level is set by division
of personnel - no legislation or regulations

conclude
① division of personnel has lost its basis
to set salary
② didn't realize wide disparity

about 1600 ft Bradley

3/14/77

problem with directors

Commissions =

APUC
Limited Entry
Pipeline

Judges.

10c
11c
12c
} not before committee at this time

10d, 11d, 12d judges after 1/~~77~~78

Legislature

13(a) no ~~statutory~~ statutory authority to ~~be~~ recommended after three months, installments.

~~13(a) if~~
~~13(b)~~

13(b) ambiguity =

Summary HB 8
in favor of repeater of Salary Commission

Bradley.

13(c) – no legal or constitutional offense as citizen.

13(d) no authority for voucher

13(e) retirement system mandatory

13(f) Per diem.

13(g) trip home during session.
difficulty finding it in Commissions charge.
or if in charge – authority to recommend to ~~add to~~ alter expenses.

Side 2

MALONE 400 ~~B~~

39.23.070(6)

→ HB 8.

Salary Commission
concept was not working.

with respect to legislative compensation
go back to old system —
take legislative pay out of salary
commission.

HB 74.
Salary Commission doesn't work

275 — adopts recommendations of
Commission:

HB 276 —
Sec. 1 — sets legislation for legislative
salary
ratify — increase salary from $9,000
to 19,705

~~Line w/~~ ~~[illegible]~~ voucher system
per diem = $50.00.
~~[illegible]~~ recommendation ~~to~~ drop
per diem after 100 days bad.

HB 277 increase per diem

Minutes of constitution convention
good public policy to cover costs
of legislatures incurred.

HB 278 —
make adjustment of cost of living.
for areas of the state

HB 279 —
same as Salary Commission
except make it retroactive to
10/14/76.

Rep Parr 0920 pm

~~Report of~~

① amend existing law governing the
commission so it continues.

② ~~ignore~~ ~~not approve~~ legislative recommendations
of report

③ approve ~~expenses~~ / judicial ~~portion~~
of report.

about 900

Committee discussion. 0930 pm

Spalding = adopt Malone approach
disagree w/ numbers

Brown — want consensus of fellow legislators.

Dankworth — support the initiative
vote against any pay raise
legislature set own salaries
do away with commission
per diem support to equal to what other
state employees

Miles - do not repeal commission
agree w/ Para
give another chance — give better
direction
do not adopt commission
recommendations.

Gardiner.
— commission made a better
recommendation than last legislature
— ~~80~~ 87% acceptable
— more thought, research
— changes to salary commission act
① no referral for commission
② legal standards
③ authority to make optional recommendations
④ approve all of the legal recommendations
past this out.

HB
276

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE COMMISSIONER / POUCH C – JUNEAU 99811
JAY S. HAMMOND, GOVERNOR

March 2, 1977

Honorable Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

The new employee payroll system being developed by the Department of Administration and scheduled for implementation early in Fiscal Year 1978, provides for all salaries to be paid on a bi-weekly basis instead of the current monthly schedule.

Last year, legislation relating to salaries was written to express only annual amounts to avoid any possible conflict with provisions of the new payroll system. We note, now, that House Bills 276 and 279 referred to your committee again express salaries for certain employees as "payable monthly in 12 equal installments."

It would be appreciated if these bills could be amended to express only the annual amount. Your assistance in this regard is appreciated and if there is any further information we can give you in this regard please do not hesitate to call us.

Very truly yours,

Richard Freer

Richard W. Freer
Deputy Commissioner

RWF/kw

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/17/77

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Rep. Brown
Rep. Specking
Rep. Dankworth

Absent were:

Rep. Elvason
Rep. Rudd

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Rep. Parr testified in favor of amending the existing law governoring the salary commission but basicly letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

Members files

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER / *POUCH C – JUNEAU 99811*

March 2, 1977

Honorable Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

The new employee payroll system being developed by the Department of Administration and scheduled for implementation early in Fiscal Year 1978, provides for all salaries to be paid on a bi-weekly basis instead of the current monthly schedule.

Last year, legislation relating to salaries was written to express only annual amounts to avoid any possible conflict with provisions of the new payroll system. We note, now, that House Bills 276 and 279 referred to your committee again express salaries for certain employees as "payable monthly in 12 equal installments."

It would be appreciated if these bills could be amended to express only the annual amount. Your assistance in this regard is appreciated and if there is any further information we can give you in this regard please do not hesitate to call us.

Very truly yours,

Richard Freer

Richard W. Freer
Deputy Commissioner

RWF/kw

HB
277

4:00 pm
3/14/77
SB

YEAR	CPI*	% INCREASE
October 1966	97.9	
October 1967	100.0	2.1%
October 1968	102.6	2.6%
October 1969	107.3	4.6%
October 1970	111.5	3.9%
October 1971	114.4	2.6%
October 1972	116.9	2.2%
October 1973	123.8	5.9%
October 1974	140.0	13.1%
October 1975	157.4	12.4%
October 1976	167.6	6.5%
January 1977	169.4	

1972 to 1976 had a total of 43.4% increase, or an average increase of 8.02%

the numbers were prepared by Chris Miller of the Department of Labor, Research and Analysis, 465-4514

* Consumer Price Index for Anchorage

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

Minutes of the Committee Meeting of 3/17/77

The meeting was called to order by Chairman Gardiner at 7:00p.m.
Present were: Chairman Gardiner
Vice - Chairman Miles
Rep. Brown
Rep. Specking
Rep. Dankworth

Absent were:

Rep. Eliason
Rep. Rudd

The Committee first took up the salary commission report and heard testimony from Kay Deeble of the Salary Commission. Ms. Deeble briefly went over parts of the report, dealing with the executive and judicial catagories and discussed the three major aspects of legislative provisions dealing with salary, per dium, and vouchers. Ms. Deeble was questioned by the Committee and other Legislators and observes at the meeting regarding specific methods by which they arrived at the per dium recommendation and the vouchery recommendations.

The Committee then heard from LAA Attorney, Dick Bradley, regarding a request that had been made by Chairman Gardiner for a legal opinion dealing with aspects of the Salary Commission report. A three page memo was handed out to the Committee members prior to the meeting in the full report had not been typed as of the time of the meeting but Mr. Bradley gave an oral presentation.

Rep. Swanson testified briefly on HB 8 which would repeal the salary commission and the salary commission recommendations.

Speaker Malone testified on HB 8 and HB 274,275,276,277,278 & 279. Malone testified in favor of repealing the salary commission report with respect to legislative compensation or taking the legislative compensation out of the preview of the salary commission.

Rep. Parr testified in favor of amending the existing law governoring the salary commission but basicly letting it continue in its work. He also testified that the legislative recommendations of the report should be ignored and the legislature enact its own salary and benefit levels.'

The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentatio of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

HB
279

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER / POUCH C – JUNEAU 99811

March 2, 1977

Honorable Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Representative Gardiner:

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Very truly yours,

Richard Freer

Richard W. Freer
Deputy Commissioner

RWF/kw

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

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The Committee discussed the various proposals brought up through the testimony but did not reach a conclusion on how to treat the salary commission report nor the other items of legislation pending a presentation of the issue to the full Committee.

The meeting adjourned at 10:00 pm.

House Judiciary
March 8, 1977

The meeting was called to order at 3:00 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason, Brown and Specking. Mrs. Rudd was absent.

HB 112 Appropriation for capital improvements within the court system HB 112

Mr. Miles explained the memo that he had written to the committee regarding HB 112.

Art Snowden, Director of the Court System, explained that the costs indicated in this bill were provided on the basis of consultation with the Department of Public Works.

Mr. Brown reminded the committee that the $710,000 figure for the Fairbanks Court Building had been amended to be reduced to $60,000.

Mr. Miles asked if these figures in the bill are still valid. Rick Barrier, Manager of Fiscal Operations for the Court System, answered that "yes", they were.

There was a general discussion about other court building projects and their costs.

Mr. Brown moved that the Dillingham figure be changed to 1,063,027 (instead of 1,458,000). He also moved that a letter be sent to the Finance Committee with the bill to have them consider a lease-back program for the Dillingham Court Building.

The committee generally feels that the costs are unrealistic. The Finance Committee will probably adjust the figures. The bill was moved out of committee. Gardiner will write a letter to the Finance Committee- to accompany the bill- saying that the Judiciary Committee felt that the figures provided by Public Works were unrealistic.

HB 279 Judicial compensation HB 279

Art Snowden explained the purpose of this bill as being to make it so that all judges are paid the same salary, rather than having the salaries vary from one part of the state to another.

This bill does essentially the same thing as the salary commission recommendation. Only one or the other will be adopted.

This bill will be taken up again at a later date with similar Malone bills.

HB 278 Geographic cost of living salary differentials for judicial officers HB 278

Art Snowden explained that the purpose of this bill would be to provide judges with a cost of living differential, like other state employees. It provides the same % cost of living increase as for other state employees.

It was indicated that the 7.5 % for the retirement system wouldn't apply to judges presently sitting, but it would apply to judges coming on after the effective date of the act.

Susan Burke, Staff Counsel for the Court System, also answered some questions about the bill.

Mr. Brown objected to the title of the bill. He felt it was not broad enough to cover section 4 on retirement. The committee agreed.

Mr. Brown indicated that Section 25.25.049 may be redundant with other law. If not, the interest rate referred to in the bill needs to be more specific.

This bill will be considered again at a later date.

HB 238 Inquiries into cause of death HB 238

Susan Burke explained the intent of the bill. She said, however, that this was the first time that she had seen section 2... and she doesn't feel that a coroner's inquest should be completely illiminated (which line 19 would do).

Mr. Eliason moved that section 2 of the bill be deleted. He also moved the bill out of committee. Both motions passed and the bill was moved out of committee.

HB 237 Appointment and compensation of registrars of vital statistics HB 237

Art Snowden and Susan Burke explained the purpose of the bill.

Mr. Gardiner requested that Rick Barrier, Manager of fiscal operations for the court system, get together with the Department of Health and Social Services to come up with a fiscal note for this bill.

Lois Jund, Deputy Commissioner for the Department of Health and Social Services, was here but indicated that they would need more information about the bill before being able to testify.

This bill will come up again later.

The meeting was adjourned at 4:30

HB
297

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

PUBLIC DEFENDER AGENCY

333 K STREET
ANCHORAGE 99501
PHONE: 907-~~279-0565~~ 279-7541

March 16, 1977

Walter Carpeneti
Assistant Public Defender
Pouch AE
Juneau, Alaska 99811

Re: Senate Bill 206

Dear Bud:

As I discussed with you on the telephone today, this agency has been requested to testify on the subject of Senate Bill 206: The so-called "presumptive sentencing" bill. Unfortunately, I am beginning a two-count murder trial on Monday, and I will not be able to come to Juneau to testify, even though I think the bill is important enough to justify such action. I have asked you to substitute for me and to be the representative of this agency at the hearings on the bill. I hope that you will submit this letter as a part of your testimony, as it gives my views on the bill and outlines what I would say.

First, I am generally in favor of any attempt to clean up, simplify, make more efficient and rational the criminal law. The present Alaska Statutes dealing with this subject are frequently poorly conceived and badly drafted; undoubtedly, they need revision. However, a comprehensive revision of Alaskan criminal law is currently underway. This approach is a better idea than piecemeal legislation.

The presumptive sentencing bill is a major change in the law. It follows closely upon another major policy change imposed by the Attorney General's ban on plea bargaining. Although we cannot yet evaluate the effects of no plea bargaining on our system, I feel safe in saying that a tremendous impact has already been felt, including a large increase in trials, an even larger increase in appeals, and an increase in the expense of processing criminal cases.

I anticipate an unquantifiable, but probable, financial effect on this agency, the court system, prosecution, and the taxpayers of this state from yet another major policy change. Almost certainly we will see an increase of

litigation caused by this very complicated bill. As I told Duncan Fowler of the State Criminal Justice Planning Agency (see letter attached), the bill is a litigator's dream, and I foresee much litigation merely to determine how the Alaska Supreme Court will construe it.

I do not know precisely what statistics upon which Mr. Rubinstein based the sentencing figures in his statute. I certainly hope that the legislature has required an adequate analysis of backup statistics. I asked Mr. Rubinstein for these figures, but he could not provide them for me on short notice.

I suppose my major problem with the bill is precisely that of short notice. It was submitted late, and appropriate opportunity has not been had to solicit well-prepared responses to the bill from all segments of the system. The Criminal Code revision has included input from all segments: Court System, prosecution, defense, and public. It would not appear that the same equality of response has been provided with regard to Senate Bill 206.

Very truly yours,

Brian Shortell

Brian Shortell
Public Defender

BS:jd

Enclosures

House Judiciary
March 30, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason and Specking. Mr. Brown came late. Mrs. Rudd was absent.

HB 297 Sentencing

HB 297

Bud Carpenetti from the Public Defender's Office in Juneau was here on behalf of Brian Shortell (head of the Public Defender's Office in Anchorage). He indicated that they have some problems with this bill in that some references don't coincide with the system being proposed by the Criminal Code Revision Subcommission. The feel that the timing of this legislation is bad- that it may be premature. He indicated that the bill is based on the premise that judges can't be trusted.

Commissioner Burton from the Department of Public Safety was here to testify in support of the bill. He said that the law enforcement people that he knows and has spoken with are in support of this bill.

Dan Hickey from the Dept. of Law was here to speak to the fiscal note that had been drawn up by the Dept. of Health and Social Services. Mike Rubenstein from the Judicial Council also spoke about the fiscal note. The committee's feeling seemed to be that they found the fiscal note to be troublesome.

There were further comments on the bill by both Dan Hickey and Mike Rubenstein. Mr. Rubenstein said that he didn't feel that Mr. Carpenetti's statement that this bill is based on the premise that judges can't be trusted is correct.

This bill will be considered again later.

The meeting was adjourned at 4:45 p.m.

House Judiciary
March 19, 1977

The meeting was called to order at 1:30 p.m. Members present were Gardiner, Miles, Brown, Rudd, Specking and Dankworth. Mr. Eliason was absent.

HB 297 Sentencing HB 297

Testimony on HB 297 was continued from Friday, starting with "mitigating circumstances" on page 9. Further testimony was heard from Mike Rubenstein and Dan Hickey.

The meeting was adjourned at 3:00 p.m.

(907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

March 18, 1977

Representative Terry Gardiner
Pouch V
Juneau, AK 99811

Dear Rep. Gardiner:

This will respond to your request for comments regarding S.B. 206, the presumptive sentencing bill. In the nature of comments upon short consideration, this letter will tend to raise questions rather than answer them. I am sure that satisfactory answers compatible with the ultimate adoption of S.B. 206 can be made available. In general, at the philosophical level, I believe all of the staff here believe that presumptive sentencing in some form is a progressive step in making our justice system fairer and more understandable.

1. PURPOSE CLAUSE. Proposed AS 12.55.005 of the Act would appear to throw down a constitutional gauntlet unnecessarily. It is not clear what purpose the declaration of purpose clause serves since the scheme seems to speak for itself.

As you know, the Alaska Constitution states:

> "Penal administration shall be based on the principle of reformation and upon the need to protect the public."

We believe a presumptive sentencing scheme is compatible with this constitutional goal. Both the prospect for reformation and the need to protect the public require that the penal law have a deterrent effect proportionate to the offense.

The purpose clause offers a fruitful field for litigation respecting the extent to which the Legislature intends to depart from the constitutional prescription. Possibly the draftsmen believe that the sentencing process is something different from "penal administration."

We do not understand why the draftsmen felt compelled to proclaim the primary purpose of the act to be to "punish" - which Webster defines as "to cause to undergo pain, loss or suffering for a crime or wrongdoing." The dictionary notes "punish... generally connotes retribution rather than correction..." c.f. Chaney v State.

This tone problem is exacerbated slightly by the reference to "an non-criminal member of society" in (a) (6) with its suggestion that criminality is a question of status not conduct.

The declaration of purpose is not only philosophical in tone but it is comprehensive in scope. Yet is applies to certain enumerated crimes. No statement is made regarding the justification for applying the scheme to some crimes but not others...Does this create a constitutional classification problem?

2. SENTENCING ALTERNATIVES. AS 12.55.007 (6) (3) Does this mean the specific offender (O.K.) or the general offender? (problems)

There is some question regarding how the court is to interpret AS 12.55.007 (c) in relation to the presumptive sentencing provisions of the bill. A judge is bound by the presumptive sentence. He weighs specified aggravating and mitigating circumstances in departing from that sentence and presumably in imposing sentence he reviews those circumstances. At what point does he go back to the philosophy of sentencing set forth in AS 12.55.005? What bearing will each of those factors have on the presumptive sentence?

3. CLASSIFICATION OF FELONIES. AS 12.55.033(a). While each crime considered individually may be constitutionally firm, does the sentencing bill open up a new basis of attack by describing the elements of each of class A and class B felonies? For instance, suppose a person commits a class A felony, but there was not, in fact, a great risk of violence in the conduct. Can he then charge an arbitrary classification as to his specific offense?

4. THE PRESUMPTIVE TERMS OF YEARS. AS 12.55.035. Two of the basic tests of any sentencing scheme are whether it incarcerates the most "relevant" persons - those who pose the greatest danger to the public - and its effect on the overall prison capacity of the system.

Are some people being "squeezed out" as others are put in? What changes will take place in the character of the prison population and how should correctional facilities and programs be designed to meet these characteristics?

Unfortunately, it is impossible to provide even tentative answers to these kinds of questions without carefully review-

ing the background data which went into the development of each presumptive sentence and predictive analysis of the effect of the aggravating and mitigating factors on actual terms served. It is my understanding that the establishment of presumptive terms was based upon "average" experience but that for some offenses the draftsmen chose to depart from those sentences. How hard is the initial data? Does it come from court records of sentences imposed or correctional data on time served? What was the justification for picking "averages"? What is the justification in departing from it in some cases and what are the effects of those departures on capacity issues?

5. DESIGN OF PRESUMPTIVE SENTENCE STRUCTURE. AS 12.55.035(d) establishes "physical injury" as a major distinguishing factor in determining eligibility to opt out of the system. Has any thought been given to defining this crucial phrase - whether physical injury can be a bruise from an accidental bump on the head when the victim stepped back under a low light or an intentional gunshot wound. How do you decide whether a defendant "employed" a firearm? Does it include a co-defendant's use of a firearm with the knowledge of the defendant?

Under 35(b)(2) suppose the prior offense is an offense which includes all, or substantially all of the elements of the offense charged but also includes several other elements - e.g., an a.d.w. which was charged under a special statute involving the use of fire or poison. The elements of the prior crim are not identical. Would it count as a prior conviction under this language?

Under AS 12.55.041(c), here assuming the burden of going forward with "substantial evidence" may be placed on the defendant, isn't he entitled to a jury trial on the issue once he meets that burden and the state is obliged to prove the prior conviction beyond a reasonable doubt?

In the aggravating factors listed in AS 12.55.042(b) are "cruelty", "dangerous weapon" and "physical injury" of a sufficiently precise meaning to be readily applicable? For instance, does cruelty include mental cruelty?

In 12.55.042(c) does the proposed law inadvertently create by statute defenses of "coercion", "threat" or "compulsion" which may or may not be defenses at common law?

What does "youthful" mean in 042(c)(4)? To what age does it reference? May a more "Mature" person be younger?

What is an infirmity resulting from age? (042(c)(4)) Does it mean advanced age or can the mental infirmities of youth mitigate? How about infirmities of a young crippled person? Is the classification stated a rational one? Isn't

the existence of an infirmity alone the more appropriate standard alone? How is "infirmity" to be defined?

Under 042(c)(3), partial proof of certain specified defenses is allowed as a mitigating factor. Why were these particular defenses chosen and not others? For instance, the existence of mental illness not found by a jury to be a complete defense is frequently considered now as a mitigating factor by a sentencing judge.

How do you treat a "period of incarceration" under (f)(2) (and elsewhere) when the incarceration was not the result of a conviction sustained on appeal?

Under 12.55.043(c) does the term "punishment" mean something different from "presumptive term" as used elsewhere in the bill?

Does the language in proposed AS 12.55.042(d) mean that many weapons cases and a goodly number of assault cases will never involve aggravation on grounds listed in 042(b)(1)-(3)? Is there a risk that judges will sentence with aggravation in assault cases involving weapons, where weapons are an element in the offense until an appeal settles the issue?

6. PROCEDURAL DUE PROCESS. In proposed AS 12.55.042(e) are counsel bound by the trial record, or may they introduce factors which are not presented at trial? Does this create problems? (e.g., collateral use of inadmissable evidence?)

Can you constitutionally create "majority" sentencing as proposed in AS 12.55.044(c) or must the decision of the review panel be unanimous? Could a dissenter file a dissenting opinion? If there is a dissent, should there be an automatic appellate review by the Supreme Court?

Can you constitutionally deny "future" good time as is contemplated under proposed AS 33.20.010(b)? Can the denial be in excess of 30 days? What "due process" standards should be required by legislative action, as opposed to rule or regulation? No mention of A.P.A. Should there be?

A final point. Proposed AS 12.55.035(a)(2)(3) may not be written dearly enough to comply with Supreme Court holding in Davenport.

These thoughts are offered in conformity with your request for immediate comment. We are sending a copy to Representative Dankworth who made essentially the same request.

It is likely that on reflection, we might wish to withdraw some observations, elaborate on others or offer new comments. I should also observe that we have not had time to confer with any of the draftsmen on these matters. It would have been helpful if the bill had been accompanied by a careful explanatory commentary as is the case, for instance, with the criminal code revision. We are concerned that every sentence under this bill will be the

occasion for appeals since so many questions are left open by the text alone. Our comments are not prepared with the care we would use if this were to be entered as part of a formal record. If you have any inclinations in that regard, we would prefer to consult with the draftsmen before entering any formal comments.

Sincerely,

John E. Havelock
Director

JEH/sl

cc: Rep. Dankworth

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

March 29, 1977

The Honorable Robert Boochever
Chief Justice
Supreme Court of Alaska
Pouch U
Juneau, Alaska 99811

Re: H. B. 297
S. B. 206

Dear Chief Justice:

The committee appointed to consider presumptive sentencing has held two meetings, the last one being on March 23, 1977, when specific attention was given to H.B. 297 and S.B. 206. These two bills are identical and are designed to implement presumptive sentencing in Alaska at least as to Class A felonies.

As defined in the bills, Class A felonies include felonies "characteristically involving aggravated violence against a person, or great risk of aggravated violence against a person." The bills list second degree murder, manslaughter under A.S. 11.15.040, forcible rape under A.S. 11.15.120, mayhem under A.S. 11.14.140, shooting, stabbing or cutting with intent to kill, wound or maim under A.S. 11.15.150, assault with intent to kill or commit rape or robbery under A.S. 11.15.190, poisoning under A.S. 11.15.210, assault with a dangerous weapon under A.S. 11.15.220, aggravated assault under A.S. 11.15.225, robbery under A.S. 11.15.240, kidnapping under A.S. 11.15.260, burglary in a dwelling when occupied by another under A.S. 11.20.080 and assault on a correctional officer under A.S. 11.30.140 or A.S. 11.30.160. The committee is of the view that first and second degree arson fit the definition of Class A felony under the bills

and that first and second degree arson ought to be included as Class A felonies.

The three committee members, Judge Buckalew, Judge Taylor, and the undersigned are unamimously in favor of the concept of the bill. In the First District, I believe it is accurate to say that the Superior Court judges favor the concept of the bill, but there is some concern that the presumptive sentences set forth in the bill are too high in some instances, for the average case.

In the Fourth District, the Superior Court judges apparently favor the concept of presumptive sentencing. Only one comment was reported to your committee and that was that the presumptive sentence for forcible rape was too low.

In the Third District, the reaction appears to be more mixed. Some of the Superior Court judges in the Third District favor wide judicial discretion in sentencing as it presently exists while others favor the concept of the presumptive sentencing bills. There is also some feeling in the Third District that the presumptive sentences in the bills as they are today are too high for the average case while others in the Third District feel they are too low.

While we are unable to report, at this time, concerning the views of other judges, the committee members were in agreement with the relatively wide discretion still available to the sentencing judge in first offender cases. In fact, we feel that this is a particularly unimportant feature of the bill as it presently exists. While the sentencing judge has large discretion on the lenient side in first offender cases, it is the understanding of the committee that only a three judge panel could impose a sentence in excess of the maximum presumptive sentence (the presumptive sentence plus 50%) in first offender cases. That provision is an important safeguard against abuse of judicial discretion and we urge that it be retained.

The committee members are not particularly anxious to offer comment on the particular presumptive sentences set forth in the bills, but we certainly believe that they are high enough.

If I may offer my own view, I think the presumptive sentences in many instances are simply too high and that adoption of the bill with those sentences will lead to a substantial number of mitigation hearings which, in turn, will tend to consume judicial time and resources. If the idea of presumptive sentencing is to cover the normal average case, then, I think the presumptive sentence in many categories ought to be lowered.

After some rather extended discussion, the committee endorsed adoption of H.B. 297 in this Session of the Legislature. We understand that a thorough revision of the Criminal Code is under way and that much of the work already done on presumptive sentencing will need to be redone in order to correlate this sentencing scheme to a new Criminal Code. However, the committee felt it was important to get at least some experience with presumptive sentencing before it was made generally applicable to all felonies. If either one of these bills could be passed during this Session of the Legislature, both the Judiciary and the Legislature could have the benefit of some experience with the concept of presumptive sentencing in a limited class of felonies in which follow up and study of the results could be accomplished without a whole lot of time and money being spent. If shortcomings developed or some of the procedures set forth in the bills concerning hearings in aggravation or mitigation or the three judge sentencing panel proved too cumbersome, these problems could be resolved before the system bogged down.

As to the three judge sentencing panel provided for in A.S. 12.55.044, I think it is accurate to say that the committee does not believe this panel will or should be involved in very many cases. However, its function will be an important one and consistency would seem to require that the panel be selected on a statewide basis and serve for definite terms and that those terms should be long enough so that some useful guidelines can develop. As we understand the bill, the three judge panel comes into play only when the sentencing judge states that the presumptive sentence called for by the statute is unjust. In other words, neither the prosecution nor the defendant can request consideration by a three judge panel. We believe that this feature ought to be retained in the bill and we would recommend that the bill spell out more clearly than it does that neither party can request a three judge panel; that the panel would be convened only when the sentencing judge felt the presumptive sentence unjust. We would also suggest that the Legislature clarify just what is meant by "relevant mitigating or aggravating factors not specifically included in Section 42 of this chapter" and what is meant by "aggravating or mitigating factors" that "would result in manifest injustice to the defendant or the public" as those terms are used in Section 43.

Section 43 (a) of the bill appears to allow the sentencing judge to either exceed or go below the presumptive sentence without reference to a three judge panel in the case of first offenders. Other provisions of the bill appear to allow the sentencing judge only to go below the presumptive sentence, not exceed it. The committee feels very strongly that a sentencing judge should never be allowed to exceed the applicable presumptive sentence,

without referral to the three judge panel and we recommend that Section 43 be re-written to reflect that limitation. We can conceive of no policy justification for greater discretion on the high side in first offender cases than exists in repeat offender cases, and such a situation would seem to do violence to the whole rationale behind presumptive sentencing.

There are two matters that the committee did not feel were adequately addressed in the bill.

One is rehabilitation. We understand that one of the principal arguments for presumptive sentencing, mandatory minimum sentencing and a variety of other proposals is the argument that the concept of rehabilitation or treatment of the offender has not been a successful endeavor and, in fact, has been the rationale for much abuse in the indeterminate sentencing procedures now in vogue. In short, it is difficult to justify different sentences for the same offense when the available information does not demonstrate that the different sentences, or treatment, were required in any given case, nor than when "required" and ordered or recommended, it is available, and finally when actually available, that it is successful.

However, that does not justify to us the idea of junking rehabilitation altogether. There is evidence that some programs are helpful in meeting some identifiable causes of criminal conduct in some offenders. We feel that the presumptive sentencing legislation ought to address itself more strongly to the area of rehabilitation programs, particularly in the area of drug related offenses, including alcohol. The provisions in the bill as it now exists are nothing more than whitewash and amount to no more than lip service to the mandate of the Alaska Constitution. In addition, it is simply bad policy. It amounts to throwing the baby out with the bath water. Certainly, more discrimination is needed in the use of these rehabilitation programs, but the Legislature should address that problem, not ignore it.

Another area not addressed in the pending legislation is appellate review of sentences. Briefly, one of the very strong arguments for appellate review of sentencing was to provide a check on disparity in sentencing and another was to provide a method of establishing guidelines for the exercise of the wide discretion given to sentencing judges under statutes now in effect in Alaska.

The presumptive sentencing bills provide for a presumptive sentence in each Class A felony, and authorize the sentencing judge to exceed that sentence, or decrease it, by 50% after considering certain enumerated aggravating or mitigating circumstances.

The unusual case in which the sentencing judge feels that the presumptive sentence is too harsh or too lenient is provided for by referral to a three judge court.

Under that scheme, a question arises as to the function of appellate review. Given the sharply increasing workload in the Supreme Court, we recommend that some consideration be given to eliminating appellate review. We cannot articulate any benefit to be gained by the continued expenditure of judicial time and resources on review of sentences if presumptive sentencing becomes the law in Alaska. This, of course, does not mean that no reason exists for continued appellate review, but the committee does feel that the Supreme Court or perhaps, the Judicial Council ought to explore the question and make a recommendation concerning it to the Legislature.

In recommending a review of the necessity for appellate consideration of sentences, we understand that a sentencing court's failure to follow the procedures outlined in the legislation and such new rules as may be necessary to implement it would in itself be grounds for reversal and re-sentencing. I suppose the question we asked ourselves was: "Assuming compliance with the applicable statute and rules, under presumptive sentencing, what would be the function of appellate review?" We couldn't, in the limited time available, come up with any, and so we recommend that the concept of appellate review be re-evaluated in light of presumptive sentencing.

The committee gave consideration to the factors in the bill on mitigation or aggravation. We concluded that the bill, including amendments proposed by Mr. Hickey and Mr. Rubenstein, was probably sufficient in that regard. Although most sentencing judges have undoubtedly considered other factors from time to time, the factors listed certainly seem to cover the normal case.

In conclusion, please accept my apology for indulging an old habit and rambling on for too long a time. I have probably done my cohorts an injustice. The three judges on this committee were unamimous in the view that the bills present a much more rational and fair system of sentencing than that we presently have. We urge its favorable consideration. We note that some of our brothers disagree, and we are confident that they will make their views known, although they have not done so yet to our knowledge.

Respectfully,

S/ Thomas E. Schulz

Thomas E. Schulz
Chairman
Presumptive Sentencing Committee

TES:ri

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR
J. S. Hammond

PUBLIC DEFENDER AGENCY

415 Main Room 206
BOX 1296—KETCHIKAN 99901
TEL: 225-6189

March 25, 1977

Honorable Terry Gardiner
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

The rumor has been fostered, apparently by news reports from the Governor's Office, that a presumptive sentencing bill will pass the legislature this session and it causes some concern. The desire of english speaking peoples for certainity in the criminal law is aged and has much to be commended. However, the proposed legislation in HB 297 is too far reaching for passage absent critical analysis. The bill seems to effectively repeal the "reformation" principal of Alaska Constitution, Art. I, §12.

Please defer passage to preserve opportunity for extensive comment in the next session of the legislature.

Terry, historical antidote may be used to make the point that excessive punishment serves no purpose and the most iron clad of rules can be avoided. A good thing can be overdone. One is reminded of the english mandatory punishment of death by hanging for pick-pockets. A favorite site for pick-pocketing was the gallows where pick pocketers were hung.

The establishing of standards for judges to follow is, of course, necessary as not all judges have the ability or wisdom to dispense "justice." Equally unworkable, however, in my opinion are mechanistic rules requiring certain sentences upon conviction of specified acts. Within the definition of a crime, the act and actor can vary greatly and hard rules can result in cruelty. In medieval times the rules tended to be absolute and hence, interesting ways of avoiding harsh results were developed. An illiterate person to be taken before a judge was frequently given a Bible and taught to memorize certain passages so that it might appear he could read. In adjudicating the case the judge would pick passages from the Bible and, if he wanted to let the man go, the passages

chosen by the judge to be read had been previously memorized by the accused. In those times clerics were not responsible under the criminal law. Of course, clergyman were universally the only literate class. Hence, if one could read it was presumed he was a clergyman and not responsible for his acts.

The Public Defender, Brian Shortell, can state the agency's official criticism in a more erudite and scholarly manner.

Sincerely yours,

James L. Bruce

JLB:eip

cc: Honorable Robert Zeigler
Alaska State Senate
Juneau, Alaska 99811

March 10, 1977

Duncan Fowler
Criminal Justice Planning Agency
Pouch AJ
Juneau, Alaska 99811

Re: Presumptive Sentencing Bill -
Financial Impact on Public Defender
Agency

Dear Duncan:

You have asked me for an account of SB 206's possible fiscal impact on this agency. I have read the statute, discussed it with Michael Rubinstein of the Judicial Council and with some members of this age.

I think there is no question that the statute will result in a substantial increase in the number of trials tried by this agency. Senate Bill 206 takes away the incentive to plead guilty or nolo contendere, since there is really no leeway in the statute.

Additionally, there are so many procedural provisions in the statute to be interpreted, that I know that we can assume a larger number of sentence appeals at least for the first couple of years of the statute. The procedures are so complicated and so extensive that I don't question the need for much litigation to interpret procedural and substantive provisions of the statute. The statute is a litigator's dream.

More than this I can't tell you at this time. I am assuming that the bill as I have read it will be modified in the legislative process.

Any new criminal statute has a spin-off effect of increased litigation; any one as complicated as this statute is sure to increase litigation. I am assuming that this office will need additional people to handle a substantial increase in litigation, as I am assuming that the expense of trials and appeals will be reflected in the budget requests of the District Attorney, the Public Defender Agency, and the court system.

I am also assuming that the system will be willing to pay for any increase in litigation caused by SB 206. More litigation, more cost.

Very truly yours,

Brian Shortell

Brian Shortell
Public Defender

BS:jd

#

TELEGRAM

13003 KETCHIKAN ALASKA 154 03-22 144P PST ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

PMS HONORABLE TERRY GARDINER

JUN 1977 MAR 22 PM 2 13

DEAR TERRY; AS SECRETARY OF THE KETCHIKAN BAR ASSOCIATION, I'VE BEEN AUTHORIZED TO GIVE YOU OUR GROUPS FEELINGS WITH REGARD TO THE PRESUMPTIVE SENTENCING BILL. WE FEEL THAT THE BILL IS PREMATURE IN THAT NO ONE HAS REALLY HAD THE OPPORTUNITY TO PROPERLY ANALYZE ITS VARIOUS RAMIFICATIONS AND THE LENGTH OF SENTENCES INVOLVED. IN OTHER WORDS, IT SHOULD NOT BE BROUGHT OUT THIS SESSION - IT SHOULD WAIT UNTIL NEXT YEAR. THIS OPINION HAS NOTHING TO DO WITH THE MERITS OF THE PROPOSAL BUT MERELY ITS TIMELINESS. SECONDLY, IF IN FACT SOME BILL MUST COME OUT, WE WOULD SUGGEST THAT A MINIMUM PERIOD OF ONE YEAR BE ALLOWED BEFORE ITS EFFECTIVE DATE. THIS WOULD GIVE THE COURTS AND BAR TIME TO PREPARE AND PUT FORTH ANY AMMENDMENTS THAT MIGHT BE NECESSARY. IF THE KETCHIKAN BAR CAN FURNISH YOU ANY INFORMATION OR BE OF ANY HELP WITH REGARD TO THIS, PLEASE LET US KNOW.

CLIFFORD H SMITH, SECRETARY, KETCHIKAN BAR ASSOCIATION

Bud Carpenenti — Brian Shortell

1. A lot of litigation —
2. submitted late
3. not balanced input + review

Use own criminal code commission

4. piece-meal approach

— New conflicts — with the proposed revised code would have to be revised
would have to put new crimes →

Plea-Bargaining Abolition → not had time to be implemented

1. No Plea-Bargaining study
2. Sentencing Study

1. Const Problem

"Aggravated violence" — will be litigated as to meaning

Escape clause

1. Rubenstein on council
2. Rec. from Jud Com.

① 005 — most severe sentence → does this mean toward the lower end of the scale

Judges Meeting Thurs.

Taylor
Buckalew
Schultz

② All appeals go to 3 judge panel

③ May be more standards for sentencing not in bill

④ Alcohol & Drugs → institutions don't deal with problems

⑤ Sentences may be to high

⑥ Statute presently provides for sentence review by S.C. — Most States don't have that

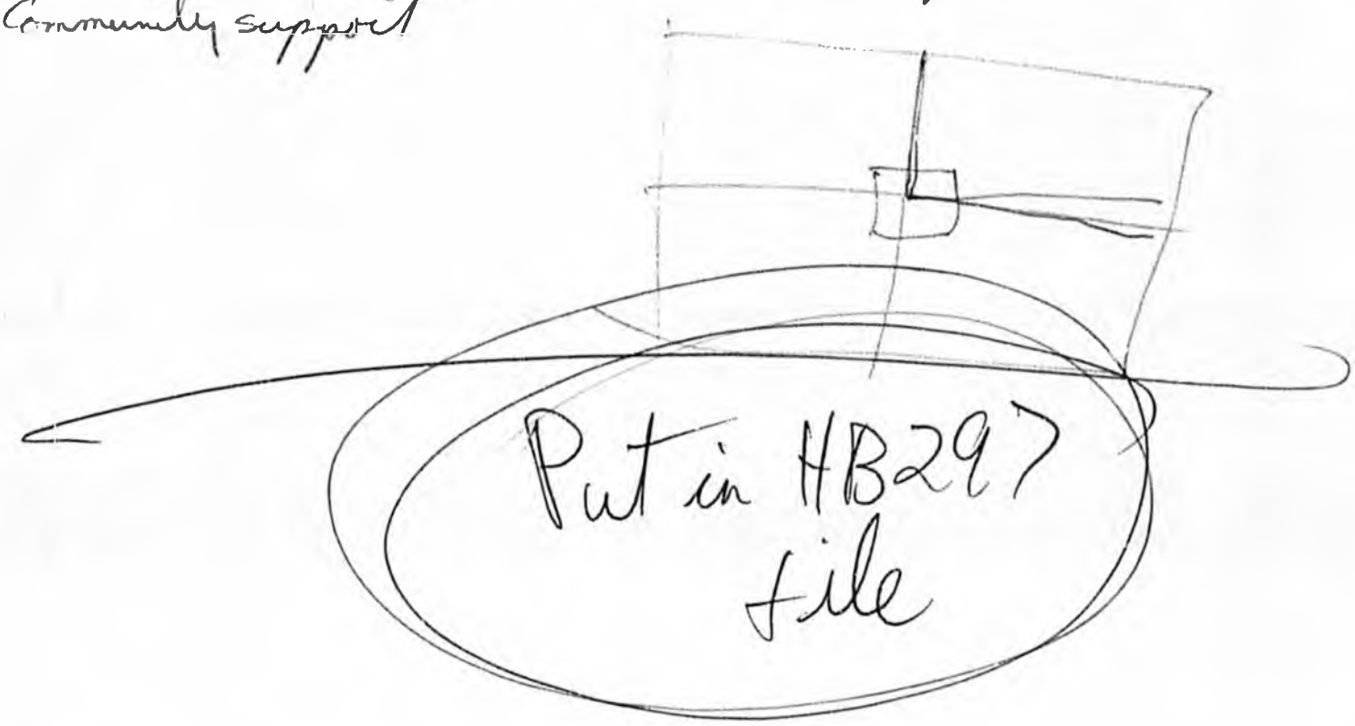
What is S.C. appellate Review function?

⑦ only judge can trigger 3 judge panel
A. Pros or Defense has same right — Preliminary showing
B. have review before deciding · Evidentiary hearing

⑧ Can judge raise an issue without going to 3 judge panel

⑨ Term of office for 3 judge panel

Jail lease back program — Non Profit Corp.
Community support



TELEGRAM

13003 KETCHIKAN ALASKA 154 03-22 144P PST

PMS HONORABLE TERRY GARDINER

JUN

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CLIFFORD H SMITH, SECRETARY, KETCHIKAN BAR ASSOCIATION

ALASKA COMMUNICATIONS, INC.
JUNEAU, ALASKA 99801
377 MAR 22 PM 2 13

CLASS A

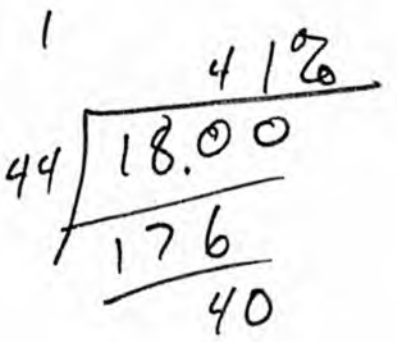
	Second Degree Murder	Manslaughter	Rape	Robbery	Kidnapping	Shooting with intent to kill, wound or maim	Assualt with intent to kill, rape, or rob	Assault with a Dangerous weapon	Burglary in a Dwelling (occupied)	Total
Number of convictions 1974-1976	8	18	23	60	3	6	10	78	16	222 (249)
% of total Class A Felony Convictions	3.6%	8.1%	10.4%	27%	1.4%	2.7%	4.5%	35.1%	7.2%	100%
Mean Sentence imposed over-all1 (months)	A	66.8	95.4	57.6	A	53.1	48.3	15.4	18	43.3
Mean Active sentences imposed2 (months)	A	75.1	95.4	68.1	A	74.4	53.7	29.5	26.2	57
Number and percentage of cases receiving probation	0	2(11%)	0	9(15%)	0	2(29%)	1(10%)	26(33%)	5(31%)	45(20%)
ACTIVE TIME										
1-6 months	0	1(6%)	1(4%)	4(7%)	0	0	4(40%)	24(31%)	1(6%)	35(20%)B
7-12 months	0	3(17%)	4(17%)	4(7%)	0	0	1(10%)	6(8%)	3(19%)	21(12%)B
13-24 months	0	1(6%)	1(4%)	7(12%)	0	0	0	7(9%)	4(25%)	20(11.3%)B
25-60 months	0	3(17%)	3(13%)	18(30%)	0	2(29%)	2(20%)	12(15%)	3(19%)	43(24.3%)B
Over 100 months	8(100%)	8(44%)	14(61%)	18(30%)	3(100%)	3(43%)	2(20%)	3(4%)	0	59(33%)B
Highest Sentence (Months)	Life	180	360	180	Life	120	180	120	60	

1. Including probation averaged in as 0 Time
2. Not including sentences of o time

A.mean not computed because some sentences were life imprisonment
B.of setences imposing active time.

62 — 19.4 Mon

44 — 19.2.



POSITION PAPER/Department of Health and Social Services

POSITION PAPER

HOUSE BILL NO. 297

"An Act relating to sentencing."

The Department of Health and Social Services supports the concept of this bill.

The Alaska Judicial Council administrative staff is currently conducting a sentencing study. The preliminary findings, incorporating data gathered on Assault with a Dangerous Weapon during a two year period, 1974-76, indicated 78 counts or 67 people convicted (86 per cent). About 47 per cent of the defendents had at least one prior felony conviction (of any class) or at least one violent/weapon misdemeanor conviction. During this period, 44 people were incarcerated for ADW, for an average of 19.2 months per individual.

Under House Bill No. 297, the same 67 people convicted would be sentenced as follows:

5 would receive probation

62 would receive active time of 2.43 years adjusted by the two-for-one good time provision - actual time served would be 19.4 months per individual.

Since ADW represented about one-third of all Class A crimes for the period, the study indicated that approximately 54 (62-44 x 3 = 54) more people will be incarcerated over a two year period, an increase of 27 per year.

The Division of Corrections' review, using data from 1971-1975 annual recidivism studies, supports the Alaska Judicial Council staff study. The Division of Corrections' information covers a wider spectrum of felonies. The combination of both organizations' data, although not completely refined, offers a reasonable base to determine the approximate impact on Corrections during the next five fiscal years.

POSITION PAPER/Department of Health and Social Services

Several qualifications and assumptions made to develop conservative projections are:

a. assumption that the effective date of House Bill No. 297 will be July 1, 1977;

b. state population growth is excluded from computations;

c. the frequency or rate of felonies remain constant;

d. a uniform rate of sentencing occurs;

e. all offenders will serve minimum presumptive sentences; and,

f. inflation cost factor equals six per cent.

The charts on pages 3 and 4 display the minimum impact on bed space due to presumptive sentencing.

The estimated dollar impact of the bill on the Division of Corrections is summarized below:

	No. of Beds Needed at Year End	Average Mandays	Institution Costs
First Year	27	5,000	$ 250,000
Second Year	49	13,870	658,000
Third Year	62	20,075	956,000
Fourth Year	76	25,185	1,236,000
Fifth Year	85	29,565	1,522,000

27 million
9 million new jail

Recommended: _____ 3/18/77
William H. Huston, Director — Date
Division of Corrections

Concurrence _____ 3/18/1977
for Francis S.L. Williamson — Date
Commissioner
Department of Health
and Social Services

CHART 1

IMPACT ON BED-SPACE DUE TO PRESUMPTIVE SENTENCING

	Percent	Additional no. of people in 2 years	Additional no. of people in 1 year	Length of Sentence	Total additional beds filled after system stabilizes
ASSAULT	33%	18	9.0	1.6	14.4
ROBBERY	25%	13	6.5	4.4	28.6
BURGLARY	16%	9	4.5	1.5	6.8
MANSLAUGHTER	10%	5	2.5	8.2	20.5
MURDER	8%	4	2.0	20.9	41.8
RAPE	7%	4	2.0	6.1	12.2
KIDNAPPING	1%	1	0.5	13.3	6.7
TOTAL	100%	54	27	-	131.0

Chart 2

	No. of Additional persons/year	Length in years till stabilization	ADDITIONAL BEDS FILLED BY End of year 1	End of year 2	End of year 3	End of year 4	End of year 5
ASSAULT	9.0	1.6	9.0	5.4			
ROBBERY	6.5	4.4	6.5	6.5	6.5	6.5	2.6
BURGLARY	4.5	1.5	4.5	2.8			
MANSLAUGHTER	2.5	8.2	2.5	2.5	2.5	2.5	2.5
MURDER	2.0	20.9	2.0	2.0	2.0	2.0	2.0
RAPE	2.0	6.1	2.0	2.0	2.0	2.0	2.0
KIDNAPPING	0.5	13.3	0.5	0.5	0.5	0.5	0.5
TOTAL			27	21.7	13.5	13.5	9.6
ACCUMLATED IMPACT			27	48.7	62.2	75.7	85.3
PERCENT OF TOTAL IMPACT			21%	37%	47%	58%	65%

111 15% reduction for No. of persons

AVERAGE IMPACT PER YEAR
******* ****** *** ****

CHART 3

PROBATION/PAROLE
********* ******

	No. of persons	Starts at	Length of probation	Year 1	Year 2	Year 3	Year 4	Year 5
ASSAULT	9	1.6	0.8	-	3.6	3.6	-	-
ROBBERY	6.5	4.4	1.5	-	-	-	-	3.9
BURGLARY	4.5	1.5	0.8	-	2.25	-	-	-
MANSLAUGHTER	2.5	8.2	1.5	-	-	-	-	-
MURDER	2.0	20.9	1.5	-	-	-	-	-
RAPE	2.0	6.1	1.5	-	-	-	-	-
KIDNAPPING	0.5	13.3	1.5	-	-	-	-	-
TOTAL			0.0	0	5.85	3.6	0.0	3.9
ACCUMULATED TOTAL			0.0	0	5.85	9.45	9.45	13.35

1) Persons receiving a presumptive sentence are subtracted from the probation figure.

2) Persons getting off of presumptive sentence for good time are added back to the probation figures.

3) Combining 1 and 2 above give the following net change in probation population.

	Year 1	Year 2	Year 3	Year 4	Year 5
CHART 2	-27	-21.7	-13.5	-13.5	- 9.6
CHART 3	+ 0	+ 5.9	+ 3.6	+ 0	+ 3.9
TOTAL	-27	-15.8	- 9.9	-13.5	- 5.7
ACCUMULATED TOTAL	-27	-42.8	-52.7	-66.2	-71.9
AVERAGE IMPACT PER YEAR	-13.5	-34.9	-47.8	-59.2	-72.0

Normal probation/parole workload increases of 6% yearly more than offset the approximate 1% negative effect as shown by chart 3 - Average Impact Per Year.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 297

Title An Act Relating to Sentencing

Requested by The Governor (with the Judicial Council) Date March 3, 1977

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services - Division of Corrections

Program Category Affected Administration of Justice

Budget Request Unit(s) Affected Adult Confinement and Probation/Parole

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		149.6	363.3	503.1	633.3	772.3
200	TRAVEL		1.3	3.7	5.6	7.5	9.3
300	CONTRACTUAL		47.2	138.8	213.1	283.4	352.5
400	COMMODITIES		42.5	125.0	191.9	255.1	317.4
500	EQUIPMENT		2.4	6.9	10.6	14.1	17.6
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.		7.0	20.8	31.9	42.4	52.8
	TOTAL		250.0	658.2	956.2	1,235.8	1,521.9

FUNDING (Thousands of Dollars)

GENERAL FUND		250.0	658.2	956.2	1,235.8	1,521.9
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		6	13	17	20	23
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Alaska Judicial Council administrative staff study preliminary data, in concert with figures developed by the Division of Corrections, forms the basis for the above computations. (Refer to Position Paper narrative for details.) The cost distributions shown above are patterned from budgeted and experienced costs of the various correctional centers.

A 6 per cent inflation factor was used.

No debt service for capital improvements was included. The impact of this bill hastens the need for additional bed capacity.

IV. DATE March 18, 1977 PREPARED BY Leland T. Dalby, Administrative Officer

AGENCY Dept. of Health & Social Services - Division of Corrections

PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

PROPOSED AMENDMENTS TO SB 206 AND HB 297

p. 1, line 23: after "sentence" delete all material and insert the following "which the offender deserves, considering the following:"

p. 1, line 24: delete all material

p. 1, line 27: delete "nature" and insert "circumstances"

p. 1, line 29: between "the" and "isolation" insert "need for"

p. 2, line 9 and 10: delete all material

p. 2, line 11: delete "(c)" and insert "(b)"

p. 2, line 11: delete "further"

p. 2, line 17: between "(a)" and "In" insert: "Except as provided in sec. 35 of this chapter,"

p. 3, line 9: delete all material and insert "(1) the offender deserves to be imprisoned considering the"

p. 3, line 12: after "offenders" insert ","

p. 3, line 12: delete "due"

p. 3, line 13: after ";" insert "or"

p. 3, line 14: delete "the term of"

p. 3, line 15: delete ";" and insert "."

p. 3, lines 16-18: delete all material

p. 4, line 5: delete all material and insert "aggravated violence against a person."

p. 5, line 20: delete "will" and insert "may"

p. 6, line 18: delete "any other felony," and insert "more than one felony"

p. 7, line 3: delete "must" and insert "shall"

p. 7, line 18: delete "must" and insert "shall"

p. 7, line 21: delete "must" and insert "shall"

p. 7, line 27: delete "must" and insert "shall"

p. 8, line 10: delete "must and insert "shall"

p. 8, line 11: delete "due"

p. 8, line 14: delete "must" and insert "shall"

p. 9, line 2: delete "or"

p. 9, between lines 5 and 6: insert the following:

"(8) the defendant was on release for another felony charge under AS 12.30.020 or 040; or

(9) the defendant was on probation, parole or community supervision for a prior felony conviction."

p. 9, line 6: delete "must" and insert "shall"

p. 9, line 23: delete "or"

p. 9, lines 24-25: delete all material and insert the following:

1st offender

"(7) the defendant does not have a criminal history of prior convictions other than for minor traffic offenses; or

No

(8) imposition of the presumptive term would cause great hardship to persons dependant on the defendant for support, which may result in the responsibility for the support passing to the state."

p. 10, line 3: delete "must" and insert "shall"

p. 10, line 6: delete "must" and insert "shall"

p. 10, line 7: delete "must" and insert "shall"

p. 10, line 14: delete "will" and insert "may"

p. 11, line 15: delete "members" and insert "of the judges"

p. 11, line 16: delete "." and insert ";"

p. 11, line 17: delete "superior court"

p. 12, line 16: delete "parole" and insert "community supervision"

p. 12, line 17: after "deduction" insert ", but in no event for more than 18 months,"

p. 12, line 17: delete "rules and"

p. 12, line 18: delete "his parole officer" and insert "the probation/parole officer."

p. 12, line 22: after "," insert "or imprisoned for a violation of probation, parole or community supervision,"

p. 12, line 27: delete "any one subsequent" and insert "an"

p. 12, line 28: after "time" insert "not to exceed 30 days"

p. 13, lines 16-19: delete all material and insert the following:

* Sec. 7. EXISTING REHABILITATIVE PROGRAMS. The Alaska Division of Corrections shall examine existing and alternative rehabilitation programs to determine how the constitutional principle of reformation may best be carried out within the context of the presumptive sentencing provisions of this Act, and annually report their findings and recommendations under this section to the legislature."

p. 14, lines 2-4: delete all material and insert the following:

"(b) The Alaska Judicial Council shall collect and analyze data relating to existing sentencing practices in the state, the impact of legislative enactments affecting sentencing, and trends in sentencing practices in other jurisdictions. The council shall periodically distribute the data and analyses to the legislature, the court system, and other affected or interested agencies.

Rape →
Burglary → 2
6

860 Felony convictions 1974-1976

Statistical Model — segment - is sum of differences from mean

simplified picture of overall picture

Picked 7 classes of crimes

class 2 - violent felonies — Use to compare to criminal code
"A Felonies"

1. Prior Felonies

Use Sentencing Study to right Standards for Pre-Sentence Reports

Not Factors
1. Degree of harm of Victim
2. Use of Firearm

Problems

(1) Page 9, line 24 (7)

Problem of civil offenses & infractions

Versus Moral Traffic offenses

(2) Alcohol

(3.) Judge can't send to Family House

(4.) Change ongoing monitoring

(5) When expanding to all Felonies
Change Aggravating & Mitigating factors

(8.) set Appeals to 3 judge panel
for all Sentencing Appeals

(9.) longer effective Date

(10) Add aggravating factor - Commission of 2nd or More offense in same crime
Robbery & Assault
"Golden Case of Double Jeopardy — 2 convictions 1 sentence

HB 297

March 3, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill designed to alter the present philosophical focus of Alaska law with respect to sentencing practices and to implement a statutory scheme of presumptive sentencing for violent crimes and crimes that have a high potential for violence.

Our present system for imposing sentences upon individuals convicted of criminal offenses is essentially an unstructured exercise of judicial discretion. The legislature has set only the outside limit of a sentencing court's authority, leaving the selection of a specific sentence to each judge on a case-by-case basis. It is true that the Supreme Court does have the statutory authority to review individual sentences and to modify or reduce an excessively harsh sentence or issue an advisory opinion with respect to an excessively lenient sentence. However, this authority has, of necessity, also been exercised on a case-by-case basis and while it is has resulted in the development of some general sentencing guidelines, it has in a larger sense provided little more than a check against individual incidents of abuse. Consequently, the sentencing judge, himself, continues to bear primary responsibility for analysis of the factors which will effect the imposition of a particular sentence.

At present, a sentencing judge in Alaska is required to consider the goals of rehabilitation of the offender; the necessity to isolate an offender from society; deterrence of both the offender and others; and comforms, comdemnation and a reaffirmation of societal norms, or put another way, punishment of the offender.

State v. Chaney, 477 P.2d 441 (Alaska 1970). The judge has been provided with little positive guidance as to which of these goals or which combination of them ought to be afforded significance in a particular case. A judge's decision within this framework has a tendency to vary dependent on the personal characteristics of defendants appearing before him and the judge's own evolving concepts of fairness and justice.

In view of this general lack of guidance, the sentencing process in Alaska has from time to time been the subject of a good deal of criticism. Different judges frequently disagree over the importance to be afforded various aggravating and mitigating factors present in a given case. Indeed, disagreement exists with respect to the essential purpose to be achieved through imposition of sentence in individual cases. The result of this disagreement has been a good deal of disparity in the sentences actually received by similarly situated offenders for similar offenses.

This proposed sentencing legislation is designed to establish a comprehensive statutory system of limited initial application. It is intended as the first step in a substantial restructuring of present sentencing practices to eliminate the unjustified disparity which now occurs. To that end, the bill seeks to provide for the imposition of sentences that are deserved by an offender, that are proportionate to the seriousness of each individual offense and which are to be imposed within a range of specific limitations placed on the exercise of judicial discretion.

The specific sentencing scheme provided for in the bill is one of "presumptive" sentencing. Initial application of this scheme is restricted in the bill to convictions for offenses denominated as Class A felonies and include the following offenses: second degree murder; manslaughter; forcible rape; mayhem; shooting, stabbing or cutting with intent to kill, wound or maim; assault with intent to kill or commit rape or robbery; assault while armed; poisoning; assault with a dangerous weapon; aggravated assault; robbery; kidnapping; burglary in a dwelling when occupied by another person; and assault on a correctional officer.

In spite of this limited initial applicability, the bill provides for the creation of an overall framework designed for adaption to sentencing for all offenses. Indeed, the bill has been specifically designed to provide for a set of statutory guidelines and criteria of general applicability. Consequently, rather than leaving an application of the guidelines delineated in State v. Chaney, supra, and its progeny to individual cases, the specific factors to be examined are codified.

The bill also sets out sentencing alternatives available to a court and specifies that a sentence of confinement shall be imposed when certain circumstances are present. In this respect, a fundamental concept embodied in the bill is a rejection of rehabilitation as the principal purpose of imprisonment and a reinstatement of the basic precept that the primary purpose of imprisonment for crime is punishment. Reliance on the principle of rehabilitation as a justification for the imprisonment of an offender has in large measure contributed to disparate sentencing practices. Extensive correctional research has failed to demonstrate that rehabilitative programs in general are effective in reducing recidivism. Consequently, the primary purpose of imprisonment should be honestly identified for what it should be, punishment of an offender for the commission of a criminal act against society.

I must emphasize that this bill is the product of combined efforts over many months of the Criminal Division of the Department of Law and the Alaska Judicial Council, which first proposed the concept of presumptive sentencing as an alternative to a straight mandatory minimum approach. The penalties set out in the bill for Class A felonies are "presumptive" penalties in that they establish the "average" sentence to be imposed in a "typical" case. Presumptive sentencing provides for sentences set by statute, such as those proposed in this bill, within a range that is neither fully mandatory nor fully discretionary, but rather, which establishes a "bottom line" below which a judge cannot reduce a sentence except in extraordinary circumstances pursuant to a procedure that is specifically delineated in the bill.

The penalties proposed in the bill are included as a beginning point for legislative discussion of the subject. While they are not "fixed in stone", neither are they merely arbitrary terms of years, but rather, have been derived from an exhaustive statistical analysis conducted by the Judicial Council of Alaska felony sentences actually imposed during a two year period between August 1, 1974, and August 1, 1976. Thus, to a large extent the terms set out in the bill adopt as a point of departure the aggregate experience of Alaska's superior court bench as expressed in actual sentencing decisions.

Under the presumptive sentencing scheme established in the bill, individual presumptive terms are provided for the specified felonies, on the basis of a first, second and third or subsequent offense. In the case of an offender with no prior felony conviction, a sentencing judge could suspend the presumptive term and place the defendant on probation if in committing the offense, he did not cause physical injury to any person and did not employ a firearm in furtherance of the offense. In the case of an individual with two prior Class A felony convictions, the presumptive term set out in the bill would become a mandatory minimum sentence below which a court could not sentence. On the other hand, a sentencing judge would be free to impose any sentence from the presumptive term up to the statutory maximum.

Recognizing that justice entails more than a mechanical scheme, the bill provides the sentencing judge with the ability to enter findings in a particular case, again by a standard of clear and convincing evidence, that a manifest injustice would result either to the public or the defendant from imposition of a presumptive sentence. In such a case, sentencing would then become the responsibility of a three-judge sentencing panel, which is specifically provided for under the bill. The three-judge panel would be free to sentence a defendant in the interest of justice to any term applicable irrespective of the presumptive sentencing provisions of the bill.

The bill also addresses the system of awarding good time to prisoners in correctional institutions. The present scheme is an amalgam of statutory and meritorious good time which, at best, is confusing to prison administrators and prisoners alike. The proposed approach allows a prisoner to earn one day

reduction in his period of confinement for every two days of good conduct served. Further, only a maximum of 30 days of accrued good time plus a period of future good time could be forfeited for any single infraction of prison rules.

Additionally, the bill provides that a prisoner sentenced under the presumptive sentencing provisions established in the bill is not eligible for discretionary release on parole. However, in order to adjust for the reality that recidivist rates are generally higher among individuals released from prison without supervision, the bill additionally provides that when a prisoner is released early as a result of accumulated good time, he is placed on parole subject to such conditions as may be imposed by the parole board or his parole officer for a period identical to his accumulated good time. The purpose and effect of this provision is to maintain active supervision over an offender for the entire length of his presumptive sentence.

Lastly, it should be emphasized that while the bill is, of necessity, drafted in a manner to fit the present offense structure found in the Alaska Statutes, it was also intentionally designed to readily mesh with the criminal code revision effort now in progress through the Alaska Criminal Code Revision Subcommission.

Sincerely,

Jay S. Hammond
Governor

COMPARISON OF LENGTHS OF SENTENCES IMPOSED OR TIME SERVED BY OFFENSES

(All Time Expressed in Years)

OFFENSE	Number of cases in Alaska, August 1, 1974 to August 1, 1976.[A]	Range of sentence as prescribed in AS Title 11.	Mean sentence imposed in Alaska[B] for all offenders 1974-1976.	2/3 of mean sentence imposed in Alaska 1974-1976.[C]	Twentieth Century Fund Recommended presumptive sentences.[D]	California presumptive sentence range.[E]	Average sentences imposed in U.S. District Courts, 1972.[F]	Mean time served before parole in all 50 states 1965-1970.[G]	Average time served by first releases from federal institutions, 1972.[H]
Second degree murder	8	15 to life	25.75	17.25	5	5-6-7		6.6	4.9
Manslaughter	18	1 to 20	5.6	3.74	4	2-3-4	5.06	2.4	
Kidnapping	3	any term of years	65.44[3]	43.84		3-4-5	18.2		2.4
Rape	23	1 to 20[1]	7.95	5.3	6	3-4-5	7.9	5.7	3.5
Robbery	60	1 to 15	6.1	4.1		2-3-4	10.3	1.34	4.0
Assault w/A dangerous weapon	79	6 months to 10 yrs; or $100 to $1000 or both	1.67	1.1	6	2-3-4	3.5	1.9	5.5
Burglary in a dwelling	16	1 to 10, 15 or 20 years[2]	1.5	1	2		3.6	1.8	4.5

A. Alaska Judicial Council Sentencing Study, 1977.

B. Alaska Judicial Council Sentencing Study, 1977.

C. The Alaska Court System is presently studying the length of time an offender serves before being released from imprisonment. Preliminary findings show that on an average, offenders actually serve 2/3 of the sentence imposed.

D. Twentieth Century Fund Task Force on Criminal Sentencing: Fair and Certain Punishment. (McGraw-Hill, N.Y. 1976) Appendix B.

E. California Senate Bill 42 (1976) Effective July 1, 1977, the statute prescribes a presumptive sentence as well as minimum and maximum beyond which the judge cannot impose time.

F. From Sourcibook of Criminal Justice Statistics, 1973, LEAA. Table 5.38.

G. Gottfredson, Don M.; M. G. Neithercutt; and Joan Nuffield: "Four Thousand Lifetimes: A Study of Time Served and Parole Releases". National Council on Crime and Delinquency, June 1973, page 28.

H. U.S. Department of Justice, Bureau of Prisons. "Statistical Report, Fiscal Years 1971 and 1972". pp.152, 153.

1. When the victim of a rape is the offender's daughter, son, sister or brother, or is under the age of 16, the sentence prescribed by Alaska law is any term of years (AS 11.15.130(a)).

2. If the burglary was committed during the daytime, the maximum is 10 years, if it was at night, the maximum is 15 years, and if the dwelling was occupied, the maximum is 20 years (AS 11.20.080).

3. One defendant received 30 years, two defendants received life terms.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

March 3, 1977

The Honorable Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Terry:

I am attaching a copy of the presumptive sentencing bill which was introduced today in both houses. I am sorry this bill has been so late, but we have worked very hard to try and reach a compromise position with the Judicial Council so that the administration and the Judicial Council would be able to present one bill to the legislature rather than starting the whole thing off with contrasting versions. In my humble view, this proposed legislation, which represents literally thousands of hours of work both in last year's legislature and in the interim, is an excellent approach to the sentencing problem. The bill has been worked over in great depth and I think we can defend every provision of it. I am giving you an advance copy of it because I know of your interest in the bill.

If you would like to talk about the bill informally before it reaches the hearing stage, I'd be happy to do so.

Yours very truly,

Avrum M. Gross
Attorney General

AMG:as

file with those
Sentencing Studies
or
Bill introduced
today

(907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

February 18, 1977

Dear Representative:

As you are undoubtedly aware, one of the more significant issues facing this session of the legislature relates to sentencing reform proposals. One of those proposals, known as presumptive sentencing, has already been introduced in the House.

Enclosed you will find a copy of a report dealing with presumptive sentencing which was prepared last year for the Criminal Law Revision Subcommission. The report digests Fair and Certain Punishment, a study conducted by the Twentieth Century Fund which developed the concept of presumptive sentencing and is considered the definitive word on the subject. Particular attention should be paid to pages 3-5 of the enclosed report which provide a summary of legislative responsibilities related to presumptive sentencing which were recommended by the Twentieth Century Fund.

The enclosed report also suggested a number of areas for further research which would be required prior to active legislative consideration of presumptive sentencing (pp. 6-8). Research conducted by the Judicial Council during the past six months should provide some answers to the issues raised in the report.

Also enclosed is a report which summarizes sentencing standards established by the Alaska Supreme Court as a result of sentence appeals heard by it under AS 12.55.120.

A third enclosure contains excerpts from an unpublished memorandum written by Professor Jerry Israel of the University of Michigan Law School entitled: "An Introduction to Basic Sentencing Issues".

I hope that you will find the enclosed reports both informative and helpful to you at the time that this issue comes before the legislature. If the Center can be of further assistance to you on this issue, please feel free to contact Peter S. Ring.

Sincerely,

John E. Havelock
Director

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Enclosures

SENTENCING ISSUES:

A SUMMARY

PREPARED BY THE

CRIMINAL JUSTICE CENTER

UNIVERSITY OF ALASKA, ANCHORAGE

February, 1977

Peter Smith Ring
Director of Research

REPORT ON PRESUMPTIVE SENTENCING

Several members of the Criminal Code Revision Commission, at its January meeting in Juneau, asked for more information on the concept of presumptive sentencing. Staff has reviewed Fair and Certain Punishment*, the study which, in 1976, introduced the concept of presumptive sentencing to a wider audience.

In very brief terms, Fair and Certain Punishment is a significant contribution to the literature on sentencing. It is worthy of the most serious consideration by all Commission members, legislators, criminal justice practitioners and concerned members of the public. It presents an excellent picture of current sentencing practices across the country and of the serious problems associated with those practices.

The Task Force deals quite fairly with these problems and presents a brief but extremely thorough discussion of a number of proposed alternatives to current sentencing practices - including mandatory minimums - all of which it found to be less than satisfactory.

Because of the special concern of the Commission on the matter of mandatory minimums, the comments of the Task Force on that subject are quoted here in full:

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*Report of the Twentieth Century Fund, Task Force on Criminal Sentencing. McGraw Hill, (1976). Because of an embargo on substantial quotation from the report prior to its April 13, 1976 release date, staff was unable to provide this report in a more timely fashion.

"Flat-time sentencing goes too far in eliminating all flexibility. By requiring every single defendant convicted under the same statute to serve the identical sentence, it threatens to create a system so automatic that it may operate in practice like a poorly programmed robot. This is especially true if statutory definitions of crime remain as broad and inclusive as they are today.

These same objections apply substantially to mandatory minimum sentences for most crimes. We agree that there are certain extremely serious crimes for which imprisonment should be required without regard to the circumstances. (Our own recommendations make provision for such imprisonment.) But we reject the concept of the mandatory minimum as a general approach to sentencing. Moreover, we have concluded that a mandatory minimum sentencing structure, even if it were desirable, only addresses a small part of the critical problem of disparity and extremes in sentencing. It deals only with minimum sentences - not with the major injustices at the high end of the range.

It is our considered view that some degree of flexibility must be maintained both at the sentencing and the parole stage in order for the system to be just and effective. We have also concluded that discretion cannot be significantly reduced or controlled without thoroughgoing legislative (or legislatively authorized) redefinition and subcategorization of current crimes."*

The Task Force went on to recommend its own solution to the problem - presumptive sentencing. This system would require substantial code revision (at least for sentencing purposes) which would allow criminal conduct to be divided into a large number of categories depending upon the circumstances of the crime. This significantly greater particularization of criminal conduct would make it unnecessary to give a judge as much latitude in

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* Id., pp. 17, 18. (Emphasis in the original.)

sentencing since the legislature would have anticipated many of the variations which go into leniency or severity in sentencing through its codification efforts.

The present discretion of judges and parole boards would be guided by a presumptive sentence for each established criminal circumstance, the type of crime having been refined by the introduction of a large number of degrees within each crime. The court would justify departure from that presumptive sentence through a calculus of certain designated mitigating or aggravating circumstances. A similar calculus would be used for second or subsequent offenders.

To implement the system the Task Force recommended:

> "For each subcategory of crime, we propose that the legislature, or a body it designates, adopt a presumptive sentence that should generally be imposed on typical first offenders who have committed the crime in the typical fashion."*
>
> * * *
>
> "The Task Force recommends that the legislature, or a body it designates, also define specific aggravating or mitigating factors again based on frequently recurring characteristics of the crime and the criminal."**
>
> * * *
>
> "The Task Force believes that sentencing hearings should be mandatory to establish any aggravating or mitigating circumstances and to have the sentence pronounced."***
>
> * * *
>
> "We recommend that the legislature establish a commission composed of representatives of the judiciary

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*Id., p. 20.
**Id., p. 20.
***Id., p. 21.

and other interested groups to undertake the drafting, establishment, and periodic review of a presumptive sentencing system."*

* * *

"We recommend that there should be periodic review of crime categories; of minimum, maximum, and presumptive sentences; and of mitigating and aggravating factors."**

* * *

"We recommend that more imaginative approaches be taken to sentencing by imposing punishment that mitigates the crime breeding effects of today's prisons."***

* * *

"We recommend the elimination of most current barriers to employment of ex-convicts."****

* * *

"We urge that, in general, presumptive sentences be accompanied by a considerable reduction in the lengths of sentences authorized by legislatures, imposed by courts, and served by prisoners. It is also our recommendation that a larger number of criminal defendants - principally those convicted of serious crimes - should serve some time in prison."*****

Each of these recommendations was accompanied by detailed commentary which outlined the Task Force's rationales and what they believed would be accomplished in a positive fashion by implementation. Their commentary touched on substantially all of the issues which the Criminal Code Revision Commission has considered in its discussions relating to substantive code revision of terms of sentence and factors related to sentencing.

The Task Force then presented an <u>illustrative</u> presumptive

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*Id., pp. 25, 26.
**Id., p. 28.
***Id., p. 28.
****Id., p. 29.
*****Id., p. 32

sentencing sentencing statute for armed robbery, and a further list of illustrative crimes and presumptive sentences. They took great pain to point out that these were illustrations of the system and not recommendations supported by the entire Task Force.

The report concluded with an excellent background paper by Professor Alan M. Dershowitz of the Harvard Law School. This paper deals with a variety of issues related to sentencing and treats all of them in a comprehensive yet easily read and understood fashion.

As is made clear by the recommendations of the Task Force, legislative enactment of a presumptive sentencing system for Alaska would require a great deal more research and analytical work beyong that provided by the Task Force's recommendations. It is of considerable significance to the Alaska Commission that such a system does not require a legislative basis. It could be implemented through the judicial power without specific legislative sanction, a course deserving careful consideration by its avoidance of adding further complexity to the work of code revision.

The Study justified non-legislative implementation as follows:

> "Except for the proposed curtailment of the power of parole boards and prison administrators, federal, state, and local court systems need not wait for legislative action to establish a system of presumptive sentences. Courts are administrative agencies in fact if not design; as Professor

> Kenneth Culp Davis notes, 'Earlier and more diligent use of agencies' rule-making power is a far more promising means of confining excessive discretionary power than urging legislative bodies to enact more meaningful standards.' Since 'power to make rules always accompanies discretionary power and need not be separately converred,' presumptive sentences for each crime, as well as the weights to be attached to prior convictions and to mitigating and aggravating circumstances, can be promulgated by courts in the form of administrative rules and guidelines. (See Kenneth Culp Davis, Discretionary Justice [Baton Rouge, La.: Louisiana State University Press, 1969], ch. 3, esp. pp. 56, 68.)"*

Thus, at least two avenues are open to arriving at implementation of a presumptive sentencing system. Of the two, the latter - court promulgated administrative rules and guidelines - presents a number of advantages over legislative enactment.

It provides the ability to experiment on the utility of presumptive sentencing in connection with a limited number of crimes without encountering the difficulties inherent in drafting, introducing and gaining passage of new legislation. Moreover, if the system develops unforeseen problems it can be revised or abandoned altogether in a much easier fashion than is required for statutory enactments.

Taking the Task Force's recommendations as a guide for legislative action, the following work would be required before a presumptive sentencing system could be enacted.

1) Substantive crimes would have to be broken down

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*Id., p. 20. (The language is contained in a comment to the text by Mr. Charles Silberman, a New York author and member of the Task Force.)

into subcategories which reflected degrees of severity. In part, we are engaged in this process already in our Code revision work. It should be noted, however, that the Commission has been resistant to a large number of subcategorizations and that, though a high degree of subdivisions may be useful to sentencing, it may well pose problems for the prosecution.

2) Terms of sentence for each subcategory of crime would have to be established for the presumptive sentence and a formula developed for dealing with repeaters and aggravating and mitigating circumstances.

These terms and their accompanying formulae could be developed through the process of group discussion and legislative compromise. Or, they could be arrived at by the process of research. Given the significance of the end product to the administration of justice, the latter seems to be the preferred course of action.

An a priori sentencing model could be constructed by random sampling of all cases involving the crime in question over a period of time to determine what Alaska's judges have given the average first time offender convicted for that crime. A similar process would be used for second, third, etc. offenders. The results of this research would provide "real" sentencing parameters within which questions related to presumptive sentences could be addressed. This research would

tend to indicate why the Task Force calls for a continuing process of review. Changes in community attitude and social conditions have a good deal to do with actual sentencing practices.

3) The same research is required on issues of mitigation and aggravation. Exhaustive "laundry" lists could be developed based on the experience of practitioner recollections, or case files could be surveyed to develop real lists of typical aggravating and mitigating circumstances which recur with some frequency in Alaska's environment.

The research involved in items (2) and (3), above, would require considerable time and effort, but it may be essential in a system where fairness is to be first subject to mechanical screening.

SENTENCING STANDARDS IN ALASKA

(NOTE: The material which follows has been excerpted from an article written by Supreme Court Justice Robert C. Erwin [entitled: "Five Years of Sentence Review in Alaska"], which appeared in 5 U.C.L.A.-Alaska L. Rev. 1 (1975).)

The Supreme Court has defined four overreaching goals of sentence review:

> "(i) to correct the sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest;
>
> (ii) to facilitate the rehabilitation of the offender by affording him an opportunity to assert grievances he may have regarding his sentence;
>
> (iii) to promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process; and
>
> (iv) to promote the development and application of criteria for sentencing which are both rational and just.

In addition, the court specified objectives which inhere in the Alaska Constitution's mandate that "[p]enal administration shall be based on the principle of reformation and upon the need for protecting the public":

> Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a non-criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence to other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves."[1]

After reviewing a number of sentence appeal cases involving homicides and other crimes against people, Justice Erwin notes:

> "These cases suggest that in the court's view the violent criminal conduct which causes injury to an innocent victim

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[1] Erwin, "Five Years of Sentence Review," 5 U.C.L.A.-Alaska L. Rev. 1,2(1975); citing State v. Chaney, 477 P2d 441 (Alaska 1970). (Footnotes omitted.)

should be dealt with firmly, and that the protection of society and the affirmation of societal norms should be primary criteria for sentencing in this area. Such a view was confirmed in the case of Ames v. State in which the Alaska Supreme Court specifically stated:

> This court has previously expressed the view that violent crimes involving physical injury to innocent people are to be regarded as our most serious offenses and are not to be treated lightly. . . ."[2]

Justice Erwin then addressed sentencing of drug offenders. He noted that in Waters v. State[3] the Supreme Court, for purposes of analysis, divided drug offenses into four degrees of culpability.

> "1. Smuggling or sale of large quantities of narcotics of possession of large quantities for sale.
>
> 2. Smuggling or sale of small quantities of narcotics or possession of small quantities for sale.
>
> 3. Possession of narcotics without intent to sell.
>
> 4. Marijuana offenses.

The court reminded the trial courts that these categories are important factors in the determination of the sentence:

> We think these categories are relevant in sentencing of drug offenders. From the record it seems that appellant is neither a titan of the narcotics business nor a mere user; he seems to be an occasional retailer. In sentencing it should be remembered that the maximum sentence for a particular offense expresses a legislative judgment about how the worst offender within a class designated by the legislature should be treated. Here there is an absence of foundation for characterization of the appellant as the worst type of drug offender."[4]

Continuing his review of sentencing drug offenders, Justice Erwin observed that:

> "The Waters case may be read as standing for three basic propositions. First, in a drug case, it is appropriate for the court on review to undertake a somewhat thorough canvass of the background, age, and particular circumstances of the defendant;

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[2] Erwin, supra. at 7, (footnotes omitted).

[3] 483 P2d 199 (Alaska 1971).

[4] Erwin, supra. at 89, (footnote omitted).

these considerations loom larger than in the areas of violent crime discussed above. Secondly, incarceration for a substantial period for a single violation will generally be inappropriate, unless the offender falls squarely within the worst category, e.g., a large-scale wholesaler. Finally, a course of drug related criminal conduct, as evidenced by other convictions, may aggravate the seriousness of the drug charge itself."[5]

Crimes involving property were also considered by Justice Erwin. With respect to this group he made the following observations:

"A substantial number of sentence appeal cases have arisen in the area of crimes involving property. These are roughly divisible for purposes of analysis into crimes of stealth, such as burglary, larceny or forgery, and crimes in which weapons are employed, such as robbery and perhaps arson.

A review of these cases indicates that age, background, and previous criminal history play a more significant part in determining the proper sentence than in those cases in which physical injury to the victim is involved. In this area the court has referred to the standards of the American Bar Association, in stating the sentences in excess of five years should be restri - ted to those cases clearly appropriate by virtue of background."[6]

* * *

"Robbery involves somewhat different considerations, given its higher potential for injury. The court has affirmed substantial sentences where violence has actually occurred or where life has been endangered, or where prior convictions indicate that "less stern measures have proven unsuccessful." Nonetheless, the opinions evidence a willingness to take a hard look at the age, background and psychiatric profile of the individual offender, and it cannot be said that the court considers the possibility of sentence relief to be automatically foreclosed in the robbery area. However, it would appear appropriate to take into consideration the potential injury to the victim in arriving at a proper sentence. Certainly, the use of weapons aggravates the nature of the crime."[7]

Before concluding his review of sentence appeals Justice Erwin dealt with one other class of offenders worthy of some attention: repeat offenders. As to their sentencing he observed:

"One further special sentencing problem, which has been mentioned in other sections but which may deserve scrutiny in

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[5] Id, pp. 9, 10.

[6] Id, p. 12 (footnote omitted).

[7] Id, p. 13 (footnote omitted).

isolation, is that of the repeated offender. In a number of per curiam opinions the court summarily approved long-term sentences for recidivists, evidencing a recognition that the incidence of repeated offenses greatly enhances the likelihood of continued antisocial behavior and the concomitant need to protect society therefrom."[8]

Justice Erwin's concluding remarks merit serious consideration and are presented hereafter in toto:

"Given the small number of sentences reversed as excessive over the past five years, can it be said that sentence appeals in Alaska have been a waste of time for the court or an exercise in futility for defendants? The answer must surely be no. A brief review of the expectations enunciated in Chaney provides a standard by which to judge success or failure.

"At the heart of sentence appeal is a developed commitment to justice for the offender, and thus the correction of an excessive sentence in a particular case. A re-reading of those cases in which relief has been granted leaves one with a sense that the Alaska Supreme Court was on solid ground, and confirms that a dispassionate appellate perspective is required. Perhaps some cases have been presented without sufficiently thoughtful examination of the defendant's background, his value to our society or the presence of mitigating circumstances (or at least without sufficient articulation of those factors); the supreme court, like all courts, must take care that classifications devised to stimulate thought do not curtail it. On the other hand, it must be remembered that, as a practical matter, the trial court is the principal repository of justice in a criminal case. The "clearly mistaken" standard assures that if the supreme court errs, it will err in favor of the trial court's discretion. Given the inherent limitations of appellate review, no other course is feasible.

"The other side of the coin of justice to the offender is justice to the community. Three times the court has disapproved lenient sentences, expressing a sense of outrage toward the gratuitous violence shown by the record. Many times it has affirmed lengthy sentences which reflect the trial judge's willingness to be severe if necessary. Early criticisms that judicial initiative would be stifled and that judges leery of reversal would seek the apparent safety of middle range sentences, have not come true. Thus it does not appear that the community has been ill-served by sentence appeal due to half-hearted vindications of societal norms.

"Finally, has sentence appeal promoted development of rational, just and humane sentencing criteria? The supreme court seems to have made progress in this area. Arguably some standards such as the rule against consideration of police "contacts" or unverified allegations, or the need for psychiatric data, could have been promulgated absent the sentence

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[8] Id, p. 18.

appeal legislation. Other doctrines - the notion that only hardcore defendants should be visited with maximum sentences, the adoption of the ABA's five year sentence guideline, the expression of the need for firmness to counter violence - clearly derive from the sentence review authority vested in the court by the legislature, and might not otherwise have been promulgated.

"Whether the rules developed in the cases are wise is a matter for individual judgment. In any event, the job of devising rational standards is far from complete, and will never be finished as long as community standards and perceptions continue to evolve. But the need for a central arbiter of those values in criminal cases, within the sentencing parameters set by the legislature, has been convincingly demonstrated. The cases show that manifest unfairness has led to reversal in a few cases; the appearance of unfairness has been alleviated in others; and, hopefully, unfairness has been prevented in numerous cases due to the guidance afforded by the Alaska Supreme Court's sentence appeal decisions."[9]

A cursory review of cases involving sentence appeals heard by the Supreme Court since Justice Erwin's article appeared revealed no significant departures from the standards enunciated in the article.

A comparison of the sentencing standards and guidelines established by the Alaska Supreme Court in the course of its sentence reviews with factors considered to be either aggravating or mitigating in nature under a presumptive sentencing scheme suggests a considerable amount of similarity. Thus, the legislature may wish to consider sentencing criteria set forth in Alaska case law should it decide to pursue a presumptive sentencing bill.

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[9] Id, pp. 20, 21.

NOTE: This is a heavily edited version of a memorandum written by Professor Jerold Israel of the University of Michigan Law School. Professor Israel has given permission to reproduce the memorandum. The editing was done by the Staff of the Criminal Justice Center and was designed to reduce the number of references to the various studies which were included in the original. In addition, appendicies contained in the original have been ommitted.

AN INTRODUCTION TO BASIC SENTENCING ISSUES

This memorandum discusses a series of proposals, advanced by generally acknowledged "experts," concerning the reform of the laws governing sentencing. Among the proposals considered are those advanced by the following groups, whose titles are too long to bear repeating in full throughout the text: American Bar Association (A.B.A. Standards), the National Counsel on Crime and Delinquency (Model Sentencing Act), the American Law Institute (Model Penal Code), the 1967 President's Commission on Law Enforcement and Administration of Justice (President's Commission), the 1973 National Advisory Commission on Criminal Justice Standards and Goals (N.A.C.), the National Commission on Reform of Federal Criminal Laws, Working Paper Report by Peter Low (Low Study), and the Twentieth Century Fund: Task Force Report on Criminal Sentencing (20th Century). The memorandum is devoted to proposals relating to the use and allocation of sentencing authority rather than to procedure utilized in exercising that authority.

LIMITED GRADES OF CRIMES

First, it is recommended that the range of available sentences be reduced to several set categories, typically classified by letter (e.g., class A felony, class B felony, class C felony, etc.). The advantages of this approach, adopted in all of the recent codes modeled after the Model Penal Code, are noted in the Low study:

> "There is a consensus among recent Code Reform efforts that the best way to avoid inconsistencies of penalty structure . . . is to systematize the sentencing provisions in a separate part of the Code by the use of sentencing categories which are intended to represent the entire spectrum of punishment that is to be available for crime. Such an approach has the effect of creating an internally consistent, carefully thought-out penalty structure which not only will assist the rationalization of penalties provided for presently existing offenses, but which also will help to assure that new offenses can be integrated into the existing structure in a manner consistent with what is already on the books. . . .

EMPHASIS UPON ALTERNATIVES TO IMPRISONMENT

Another generally accepted recommendation is that the emphasis in sentencing should be upon alternatives to imprisonment. That is, fines and community based treatments, like probation, where reasonably applicable, should be preferred to imprisonment. In support of restricting the

use of imprisonments, Professor Norval Morris, in The Future of Imprisonment, stresses that "parsimony in the use of imprisonment" follows from the basic moral and utilitarian functions of imprisonment:

> "The least restrictive--least punitive--sanction necessary to achieve defined social purposes should be chosen. . . . [Accordingly,] a presumption in favor of punishment less severe than imprisonment pervades all recent scholarship and most legislative reforms. This principle is utilitarian and humanitarian; its justification is somewhat obvious since any punitive suffering beyond societal need is, in this context, what defines cruelty. . . . The draftsmen of the American Law Institute's Model Penal Code sought to capture this principle of parsimony in imprisonment in the phraseology of that code's main article on sentencing. Section 7.01 is entitled 'Criteria for Withholding Sentence of Imprisonment . . .' and the section directs the court to order other punishments unless 'imprisonment is necessary for protection of the public.'"

MANDATORY IMPRISONMENT

Some experts argue that guidelines, such as those suggested by the Model Penal Code or Professor Morris, are inadequate because they still permit too much judicial leeway. What is needed, they argue, is greater certainty of imprisonment for serious crimes. The best approach here, they argue, is requiring imprisonment for certain crimes. In some instances,

the proposals do not require that the imprisonment be for any specified term beyond the minimum sentence that is administratively feasible in a particular jurisdiction (ordinarily one year). In other proposals, it is suggested that there should be a mandatory minimum of a specified period (e.g., 2, 3, or 4 years). This approach was recently supported by President Ford in his crime message:

"Imprisonment too seldom follows conviction for a felony. In the 1960's crime rates went higher, but the number of criminals in prison, state and federal, actually went down. * * * There should be no doubt in the minds of those who commit violent crimes -- especially crimes involving harm to others -- that they will be sent to prison if convicted under legal processes that are fair, prompt and certain."

Consider also the following comments of Professor James Q. Wilson in Thinking About Crime:

"[O]ne way of defining a good sentence is to say it is that disposition that minimizes the chance of a given offender's repeating his crime. Under that definition, we would not only expect but want disparities in sentences -- one armed robber getting five years in prison and another getting probation -- provided only that we had good reason to believe that each sentence was appropriate to each criminal's prospects for rehabilitation. On the other hand, if we believe that a good sentence is one which deters others from committing a crime, then we might wish to impose the same penalty on persons with very different prospects for rehabilitation, and to make that penalty sufficiently severe to discourage potential criminals, especially those who believe they might be regarded as good bets for rehabilitative -- which is to say, lenient -- treatment."

Compare, however, the following comments in mandatory minimums in the Low study:

"Two related arguments are typi ly advanced in support of legislatively mandated sentences. The first is that a mandatory sentence is necessary in some instances to assure that the courts will not deal too leniently with a particular offender. The second is that the certainty of substantial punishment for the violation of a particular statute will act as a significant deterrent to the commission of that offense.

"Neither argument, however, is persuasive. In the first place, there is clear evidence as a practical matter that the system does not function as the arguments would envisage. As is explored in part I of this memorandum, there is no certainty of punishment for Federal narcotics offenders [notice the standing mandatory sentences], nor are the courts prevented from dealing leniently with an offender if that is their desire.

"There are affirmative disadvantages to such sentences as well. In some instances, a mandatory sentence results, as a practical matter, in a vesting of sentencing authority in the invisible and uncontrollable discretion of the prosecutor, perhaps the least desirable place for such authority to repose. There are always alternative offenses which could be charged. . . .

Opponents of mandatory sentencing provisions have raised, in addition to the arguments noted in the Low study, the question as to whether the "taxpayers [r]eally are willing to bear the momentary costs of a mandatory sentencing program"? It is noted that the prisons currently are almost at capacity, and considerable costs would be entailed in building new prisons. It has been suggested that the public must be

willing to commit "substantial additional resources for prisons, courts and prosecutors -- in many states perhaps even doubling or tripling the capacity of the criminal-justice system -- [or such] sentencing reforms (mandatory minimums) will be a disaster, if not a joke. (Wall Street Journal, 624, 1976).

DETERMINING THE LENGTH OF SENTENCE: INDETERMINATE SENTENCE

The nature of indeterminate sentencing

Prison sentences for felony offenses typically are of the "indeterminate" variety. That is, there is a significant gap between the maximum sentence that may be served and the minimum that must be served. Thus, a person will be sentenced to imprisonment for a term of from one-to-five or three-to-ten years. Even life sentences often are indeterminate because state law will provide that a "lifer" may be paroled after serving a specified sentence (e.g., 10 years). (This does not apply to "mandatory life sentences," usually reserved for homicide).

The maximum sentence that may be imposed always is established by statute. In some jurisdictions, the judge may set a outer-limit for the indeterminate sentence that is less than that allowed by statute. In others, the maximum set by statute applies as the outer-limit in all cases. Those favoring automatic application for the statutory maximum in all cases argue that there is no way a judge can be certain in advance that the progress of the prisoner will justify his release at an earlier point than the maximum authorized by law. Those favoring granting the judge discretion to reduce the maximum argue that the judge may find that the crime committed, under the facts of the case, does not justify the full range of the sentence considered by the legislature, which must set the maximum with the most serious variety of the particular crime in mind.

Ordinarily, minimum sentences are not prescribed by law but left to the judge's discretion -- except that the minimum cannot be so close to the maximum as to eliminate the concept of indeterminancy. Thus, typically the minimum is limited by law to no more than 1/3 or 1/2 of the maximum. Some judges frown upon imposing minimums

OBJECTIONS TO INDETERMINATE SENTENCING

Disparity

A major objection to current indeterminate sentencing is that it grants the court far too much discretion, even if one accepts the value of a certain degree of indeterminancy. Consider, for example, a situation where the statute sets a maximum of 10 years and the court has the authority to reduce the maximum by half in the individual case and to set a minimum up to 1/2 of the maximum given in the case. One defendant convicted of the offense may be sentenced to 5-10 years, while the other may receive 1-5 years. Moreover, even where the maximum imposed must be that set by statute, and the discretionary minimum is limited to 1/3 of the maximum, there is a substantial difference, it is argued, between a sentence of 1 to 10 years and 3-1/3 to 10 years. While parole releases ordinarily coming in the range of two years where the board is not restricted by a lengthier minimum, the 2nd defendant may serve almost twice as long as the first.

LENGTH OF SENTENCE

Some persons, though accepting the concept of indeterminate sentences generally argued that the quest for indeterminancy does not justify the high maximum sentences authorized under typical American statutes. They argue that maximum terms should be limited to a shorter period, perhaps five years, with longer terms provided only for especially dangerous offenders through extended term sentencing provisions. The rationale supporting this proposal is noted in the N.A.C. report, which recommends that "state penal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed five years for felonies other than murder." The study report notes:

> "It is well-documented and almost universally recognized that the sentences imposed in the United States are the highest in the western world. This results from a number of factors including the high maximum sentences authorized by statutory provisions. To be assured that the very dangerous offender is incapacitated, legislatures in effect have increased the possible maximum sentence for all offenders. This dragnet approach often results in imposition of a high maximum sentence on persons for whom it is patently excessive. The wide flexibility exacerbates the disparities in sentencing that seriously handicap correctional programs.

"The President's Commission . . . reported in 1967 that more than one-half of all persons confined in state prisons in 1960 had been sentenced to maximum terms of at least ten years. But of those released in that year the average length of time actually served in confinement was less than two years, and only 8.7% had actually served five years or more.[11] Lowering the authorized maximum term will not unduly restrict the court's discretion as it affects the length of time actually served in prisons. It will, however, reduce the excessively long sentences served by some offenders for whom such sentences are inappropriate. It also will diminish disparate treatment of similarly situated offenders."

[Professor Israel concluded his discussion of basic sentencing issues with a discussion of presumptive sentencing. Because a separate memorandum from the Center has addressed that issue, it has been omitted herein.]

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11 A subsequent study, showing sentence and actual time served by first releases from state correctional institutions in 1970, was consistent. Thus, in most of the jurisdictions examined, more than 50% of the persons sentenced received terms in excess of 5 years, with over 90% actually serving less than 5 years. In Tennessee, for example, 62% were sentenced to terms of 5 years or less, 20% to terms of 10 years or less and 18% to terms in excess of 10 years. Actual time spent was less than 5 years for 90%, less than 10 years for an additional 8-1/2%, and more than ten years for only 1-1/2%. Only one of the jurisdictions cited in the study had more than 5% serving in excess of 10 years.

(907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

February 18, 1977

Dear Representative:

As you are undoubtedly aware, one of the more significant issues facing this session of the legislature relates to sentencing reform proposals. One of those proposals, known as presumptive sentencing, has already been introduced in the House.

Enclosed you will find a copy of a report dealing with presumptive sentencing which was prepared last year for the Criminal Law Revision Subcommission. The report digests Fair and Certain Punishment, a study conducted by the Twentieth Century Fund which developed the concept of presumptive sentencing and is considered the definitive word on the subject. Particular attention should be paid to pages 3-5 of the enclosed report which provide a summary of legislative responsibilities related to presumptive sentencing which were recommended by the Twentieth Century Fund.

The enclosed report also suggested a number of areas for further research which would be required prior to active legislative consideration of presumptive sentencing (pp. 6-8). Research conducted by the Judicial Council during the past six months should provide some answers to the issues raised in the report.

Also enclosed is a report which summarizes sentencing standards established by the Alaska Supreme Court as a result of sentence appeals heard by it under AS 12.55.120.

A third enclosure contains excerpts from an unpublished memorandum written by Professor Jerry Israel of the University of Michigan Law School entitled: "An Introduction to Basic Sentencing Issues".

I hope that you will find the enclosed reports both informative and helpful to you at the time that this issue comes before the legislature. If the Center can be of further assistance to you on this issue, please feel free to contact Peter S. Ring.

Sincerely,

John E. Havelock
Director

sl

Enclosures

3/3/77

~~CSSB 687~~

~~HB~~

HB 297

Bud Carpenter.

Testimony against HB297

do not do in a piece meal concept

compatibility w/ Criminal Code

homicide definition.
in Criminal Code.
2nd degree murder HB297 ~~homicide~~

mayhem presently. HB297
4 levels of assault in Criminal Code.

forcible rape. HB297
4 levels of sexual assault Crim Code

=

Abolition of plea bargaining.
adopted under HB 297
effect is not fully known at this
time

3/30/77

Professor Clark referred to
study on plea bargaining still
in progress

thirdly — likely increase litigation
speculation

areas of bill in

constitutionality —
would be raised in courts

Class A
Class B
raised by aggravated violence
2 questions
12.55.035(d) — Escape clause

assault — not defined in bill

Clark →
study

Question input to Presumptive Sentencing
from narrow representation Judicial Committee
& AG —
preferable to use Criminal Code — broader base

3/30/77

~~[illegible]~~

HB 297 =

will it dovetail w/ Criminal Code.?

dispute:

=

3 judge sentence appeal board

=

Commissioner Burton

in favor of HB 297

all law enforcement people
he knows support bill & concept

=

Fiscal Note:

67

222
.85
1110
1776
1887.6

Fiscal Note:

project 4% increase in days served for ~~ADP~~ ADW.

15003 KETCHIKAN ALASKA 154 03-22 144P PST

PMS HONORABLE TERRY GARDINER

JUN

DEAR TERRY; AS SECRETARY OF THE KETCHIKAN BAR ASSOCIATION, I'VE BEEN AUTHORIZED TO GIVE YOU OUR GROUPS FEELINGS WITH REGARD TO THE PRESUMPTIVE SENTENCING BILL. WE FEEL THAT THE BILL IS PREMATURE IN THAT NO ONE HAS REALLY HAD THE OPPORTUNITY TO PROPERLY ANALYZE ITS VARIOUS RAMIFICATIONS AND THE LENGTH OF SENTENCES INVOLVED. IN OTHER WORDS, IT SHOULD NOT BE BROUGHT OUT THIS SESSION - IT SHOULD WAIT UNTIL NEXT YEAR. THIS OPINION HAS NOTHING TO DO WITH THE MERITS OF THE PROPOSAL BUT MERELY ITS TIMELINESS. SECONDLY, IF IN FACT SOME BILL MUST COME OUT, WE WOULD SUGGEST THAT A MINIMUM PERIOD OF ONE YEAR BE ALLOWED BEFORE ITS EFFECTIVE DATE. THIS WOULD GIVE THE COURTS AND BAR TIME TO PREPARE AND PUT FORTH ANY AMENDMENTS THAT MIGHT BE NECESSARY. IF THE KETCHIKAN BAR CAN FURNISH YOU ANY INFORMATION OR BE OF ANY HELP WITH REGARD TO THIS, PLEASE LET US KNOW.

CLIFFORD H SMITH, SECRETARY, KETCHIKAN BAR ASSOCIATION

TELEGRAM
ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801
1977 MAR 22 PM 2 13

CLASS A

	Second Degree Murder	Manslaughter	Rape	Robbery	Kidnapping	Shooting with intent to kill, wound or maim	Assualt with intent to kill, rape, or rob	Assault with a Dangerous weapon	Burglary in a Dwelling (occupied)	Total
Number of convictions 1974-1976	8	18	23	60	3	6	10	78	16	(222)(.85)= 188
% of total Class A Felony Convictions	3.6%	8.1%	10.4%	27%	1.4%	2.7%	4.5%	35.1%	7.2%	100%
Mean Sentence imposed over-all1 (months)	A	66.8	95.4	57.6	A	53.1	48.3	15.4	18	43.3
Mean Active sentences im-posed2 (months)	A	75.1	95.4	68.1	A	74.4	53.7	29.5	26.2	57
Number and per-centage of cases receiving proba-tion	0	2(11%)	0	9(15%)	0	2(29%)	1(10%)	26(33%)	5(31%)	45(20%)
ACTIVE TIME										
1-6 months	0	1(6%)	1(4%)	4(7%)	0	-	4(40%)	24(31%)	1(6%)	35(20%)B
7-12 months	0	3(17%)	4(17%)	4(7%)	0	0	1(10%)	6(8%)	3(19%)	21(12%)B
13-24 months	0	1(6%)	1(4%)	7(12%)	0	0	0	7(9%)	4(25%)	20(11.3%)B
25-60 months	0	3(17%)	3(13%)	18(30%)	0	2(29%)	2(20%)	12(15%)	3(19%)	43(24.3%)B
Over 100 months	8(100%)	8(44%)	14(61%)	18(30%)	3(100%)	3(43%)	2(20%)	3(4%)	0	59(33%)B
Highest Sentence (Months)	Life	180	360	180	Life	120	180	120	60	

1. Including probation averaged in as 0 Time
2. Not including sentences of o time

A.mean not computed because some sentences were life imprisonment
B.of setences imposing active time.

PROPOSED AMENDMENTS TO SB 206 AND HB 297

p. 1, line 23: after "sentence" delete all material and insert the following "which the offender deserves, considering the following:"

p. 1, line 24: delete all material

p. 1, line 27: delete "nature" and insert "circumstances"

p. 1, line 29: between "the" and "isolation" insert "need for"

p. 2, line 9 and 10: delete all material

p. 2, line 11: delete "(c)" and insert "(b)"

p. 2, line 11: delete "further"

p. 2, line 17: between "(a)" and "In" insert: "Except as provided in sec. 35 of this chapter,"

p. 3, line 9: delete all material and insert "(1) the offender deserves to be imprisoned considering the"

line 11: after "and" insert "imprisonment (of ts) equitable considering sentences

p. 3, line 12: after "offenders" insert ","

p. 3, line 12: delete "due"

p. 3, line 13: after ";" insert "or"

p. 3, line 14: delete "the term of"

p. 3, line 15: delete ";" and insert "."

p. 3, lines 16-18: delete all material

p. 4, line 5: delete all material and insert "aggravated violence against a person."

p. 5, line 20: delete "will" and insert "may"

p. 6, line 18: delete "any other felony," and insert "more than one felony"

p. 7, line 3: delete "must" and insert "shall"

p. 7, line 18: delete "must" and insert "shall"

p. 7, line 21: delete "must" and insert "shall"

p. 7, line 27: delete "must" and insert "shall"

p. 8, line 10: delete "must and insert "shall"

p. 8, line 11: delete "due"

p. 8, line 14: delete "must" and insert "shall"

p. 9, line 2: delete "or"

p. 9, between lines 5 and 6: insert the following:

"(8) the defendant was on release for another felony charge under AS 12.30.020 or 040; or

(9) the defendant was on probation, parole or community supervision for a prior felony conviction."

p. 9, line 6: delete "must" and insert "shall"

p. 9, line 23: delete "or"

p. 9, lines 24-25: delete all material and insert the following:

"(7) the defendant does not have a criminal history of prior convictions other than for minor traffic offenses; or civil citation...

(8) imposition of the presumptive term would cause great hardship to persons dependant on the defendant for support, which may result in the responsibility for the support passing to the state."

p. 10, line 3: delete "must" and insert "shall"

p. 10, line 6: delete "must" and insert "shall"

p. 10, line 7: delete "must" and insert "shall"

p. 10, line 14: delete "will" and insert "may"

p. 11, line 15: delete "members" and insert "of the judges"

p. 11, line 16: delete "." and insert ";"

p. 11, line 17: delete "superior court"

p. 12, line 16: delete "parole" and insert "community supervision"

p. 12, line 17: after "deduction" insert ", but in no event for more than 18 months,"

p. 12, line 17: delete "rules and"

p. 12, line 18: delete "his parole officer" and insert "the probation/parole officer."

p. 12, line 22: after "," insert "or imprisoned for a violation of probation, parole or community supervision,"

p. 12, line 27: delete "any one subsequent" and insert "an"

p. 12, line 28: after "time" insert "not to exceed 30 days"

p. 13, lines 16-19: delete all material and insert the following:

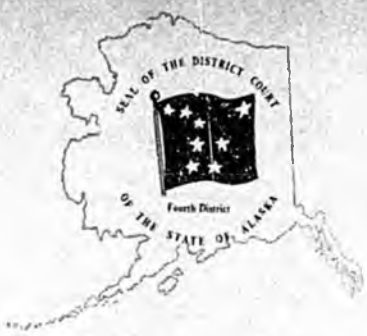
* Sec. 7. EXISTING REHABILITATIVE PROGRAMS. The Alaska Division of Corrections shall examine existing and alternative rehabilitation programs to determine how the constitutional principle of reformation may best be carried out within the context of the presumptive sentencing provisions of this Act, and annually report their findings and recommendations under this section to the legislature."

p. 14, lines 2-4: delete all material and insert the following:

"(b) The Alaska Judicial Council shall collect and analyze data relating to existing sentencing practices in the state, the impact of legislative enactments affecting sentencing, and trends in sentencing practices in other jurisdictions. The council shall periodically distribute the data and analyses to the legislature, the court system, and other affected or interested agencies.

HB
302

Members files



District Court

State of Alaska

FOURTH JUDICIAL DISTRICT
604 BARNETTE STREET
FAIRBANKS, ALASKA
99701

CHAMBERS OF
MARY ALICE MILLER, JUDGE

April 12, 1977

Honorable Steve Cowper, Representative
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 302 - prohibiting attorneys in small claims

Dear Steve:

Please do what you can to defeat this bill.

As the law now stands, the quasi-experts in the collection field are restrained somewhat by the requirement that they be represented by counsel. This bill would permit them to conduct their litigation without the ethical considerations which are binding on attorneys.

When the small claims rules were adopted, there was serious consideration given to forbidding collections agencies and corporations from using small claims procedures at all, because of the potential for abuse of the individual litigant who is unskilled in courtroom maneuvering. There were howls of outrage by the collection industry (all of whom, however, used attorneus except O'Neill) and Rule 15 is the compromise resulting from their howls.

Please do not let Alaska law move backward towards

abuse of the people for whom small claims procedures were designed.

Thanks.

Sincerely yours,

Mary Alice

Mary Alice Miller
District Court Judge

MAM/ek

HB
313

Copies for committee

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 26, 1977

SUBJECT: HB 313 and CS for HB 313 -- relating to the manager plan of municipal government

TO: Representative Terry Gardiner, Chairman
House Judiciary Committee

FROM: Jack Chenoweth, Legislative Counsel

As you consider the bill and the committee substitute offered by the House Community and Regional Affairs Committee, please consider adding the following as an additional section:

Sec. . AS 29.23.170(b) is amended to read:

(b) The borough mayor may not veto [ACTIONS OF THE ASSEMBLY TAKEN UNDER SEC. 130(d) OF THIS CHAPTER OR] actions of the board of equalization and the board of adjustment.

The additional section is desirable insofar as both versions of the bill repeal AS 29.23.130(d), referred to in the bracketed language above, and the prohibition on veto by the mayor of a question involving adoption of the manager plan is re-emphasized in the amendment to AS 29.23.430, section 1 of both versions of the bill. I think we should try to delete references to repealed sections in bills within the same legislation whenever possible.

JC:lmk
cc: Representative Lisa Rudd

HB
354

delete section 4
of HB 354

Senate did this
3243 Pat Kuscia (after 10)
Track down

EXPLANATION OF HB 354 AND SB 249
RELATING TO SUITS AGAINST LOCAL GOVERNMENTS

The Bill revises AS 09.65.070 in its entirety with nominal amendment of subsections (a) and (b), clarification of subsection (c), and primarily adding subsection (d) to amend the present statute which makes municipalities liable for all of their acts without regard to whether the act was discretionary or ministerial or was related to a governmental as opposed to a proprietary function. Definitional subsection (e) is added to clarify its application to municipalities and villages.

Subsection (d) prescribes limited exceptions to municipal liability. The municipality will not be subject to suit for acts falling within the exceptions. Employees and officers, while acting as such, will not be subject to suit for acts which are expected.

The first exception, which is in subparagraph (d)(a)(A)-(C) is similar, in part, to the language in SB 151 which would create an additional exception to the liability of the state pertaining to inspections. This exception is needed by the state's political subdivisions as well as the state itself. It would remove the threat of suit against the municipality

and its officers and employees for their failure to inspect property, their failure to discover violations or hazards and their failure to adequately abate violations and hazards discovered.

This exception is needed to limit the liability of municipalities which

1. adopt various safety and health codes (fire, building, health, sanitation, vehicle, etc.) which they are unable to vigorously enforce 100% of the time, or
2. conduct inspections for the purpose of enforcing safety and health codes, or
3. do not enforce safety and health codes

The alternative to having such statutory reassurance is the withdrawal of municipalities from the safety and health enforcement fields. The State of Alaska has already partially withdrawn from the fire inspection field as a result of the Adams and Jennings cases which imposed liability for failure to discover hazards and failure to abate discovered hazards. More injury will be done to the public by such a withdrawal than by granting the exception and allowing municipalities to proceed on a best efforts basis. The property owner, contractor, or other person responsible for an injury will be and remains liable to the injured person in either situation so the injured person is not without remedy under this exception.

The second exception, which appears in subparagraph (d)(2), confers to municipalities the same exception which the state already has under AS 09.50.250(1). Discretionary acts cover those acts which are essentially policy or planning in nature. They include such things as decisions to initiate or terminate a program, to stop maintenance of a road during the winter, to fund a program at a certain level, to concentrate on the enforcement of certain codes, etc. Municipalities do not now have the statutory protection the state has in this area and could be held liable for the exercise of their discretion in a situation where the state could not under identical circumstances. Municipalities, like the state, must be able to perform discretionary acts without fear of suit. This is not to say, however, that once the municipality has exercised its discretion to, say, build or maintain a road, it may build or maintain it in a negligent manner. It may not. Municipalities will, subject to the limitations of this section, remain liable for their ministerial torts.

The third exception, which appears in subparagraph (d)(3), covers an area in which municipalities are occasionally sued for damages. The threat of suit for damages should not play any part in the decision of a municipal official or body to issue, deny or suspend a permit or privilege of any nature. Also, this section would remove the possibility of liability

which is based on the theory that the issuance of a permit is a warranty that the plans, proposal, etc., upon which the permit was based met all applicable codes, ordinances, laws and constituted a reasonable method or proposal. The person responsible for the plans, etc., upon which the permit, etc is issued will still be liable for his work. This section would not limit the applicant's or permittee's right to go to court to force the issuance, grant, etc., if it is one to which the person is entitled.

The fourth exception, which appears in subparagraph (d)(4), is copied from the exception for the state which appears in AS 09.50.250(3) with the change here that the misrepresentation exception would be for only negligent misrepresentation, not all misrepresentation as in the case for the state. The municipality would be excepted from liability for the causes of action listed in the subparagraph. Officers and employees would be protected when the act complained of was done in the exercise of one of the actor's duties and was an act which was within his authority as an officer or employee. Thus, the zoning administrator could be held liable for falsely arresting someone while a policeman usually could not. The zoning administrator does not have the authority to arrest in the discharge of his duties so such an act would constitute an act outside his employment status, often known

in law as a frolic, and he would be personally liable. On the other hand, the policeman is not hired to administer the zoning code and could not, as a municipal official, make any statement to a citizen regarding the zoning of a particular parcel of land. The policeman would be personally liable for any misrepresentation in the course of making such a statement. The zoning administrator, and through him, the municipality would be liable for a misrepresentation if the misrepresentation was intentional. Again, this subparagraph extends to municipalities and its employees and officers most of what the state already has.

The fifth exception, which appears in subparagraph (d)(5), represents an application of the Good Samaritan principle to insulate the municipality from liability where it gratuitously responds to a need outside its limits. For example, a municipality could not be held liable for its acts in fighting a fire outside its limits. A municipality having no contractual duty to respond beyond its jurisdictional limits fears the consequences of liability and adverse insurance costs and is induced to abstain. It simply is not worth the added liability exposure. Yet, as with the inspection problem discussed above, even an occasional negligent response is more than likely far more beneficial than an across the board policy of non-response.

The sixth exception, which appears in subparagraph (d)(6), is needed for reasons which are basically the same as those relating to extra-territorial service exception

discussed immediately above. Commonly occuring examples are local police called to respond in the temporary absence of the Trooper, and mutual aid agreements respecting assistance at state airports.

In conclusion, municipal non-immunity will remain the rule. Judicially-recognized municipal liability respecting certain functions coupled with increasing difficulty in obtaining insurance to cover the risk compel local governments to re-examine and diminish the scope of their activities rather than suffer liability exposure and inability to respond in damages. This legislation is intended to afford limited liability with a view toward non-curtailment of certain traditional functions predicated on public policy favoring the municipalities to proceed on a best efforts basis.

Prepared and submitted by:

L.B. Jacobson, attorney for Petersburg, Kake, Hoonah, Skagway and Craig

Lee Sharp, attorney for Juneau

Ted Berns, assistant attorney for Anchorage

SB 249 am

4/5/97 Passed S

Probably just easier to deal with this bill rather than handling HB 351 too.

Introduced: 3/14/77
Referred: Community & Regional and Judiciary

BY RAY, BUTROVICH, COLLETTA, FERGUSON, HOHMAN, KERTTULA, MELAND, SUMNER, ZIEGLER

IN THE SENATE

SENATE BILL NO. 249

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to suits against local governments; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA.

* Section 1. AS 09.65.070(a) and (b) are amended to read:

(a) Except as provided in this section, an [AN] action may be maintained against a municipality [AN INCORPORATED BOROUGH, CITY, OR OTHER PUBLIC CORPORATION OF LIKE CHARACTER] in its corporate character and within the scope of its authority [, OR FOR AN INJURY TO THE RIGHTS OF THE PLAINTIFF ARISING FROM SOME ACT OR OMISSION OF THE UNIT OF LOCAL GOVERNMENT].

(b) A municipality [AN INCORPORATED BOROUGH, CITY OR OTHER POLITICAL SUBDIVISION] may not require a person to post bond as a condition to bringing a cause of action against it [THE INCORPORATED BOROUGH, CITY OR OTHER POLITICAL SUBDIVISION].

* Sec. 2. AS 09.65.070(c) is repealed and re-enacted to read:

(c) No action may be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort or breach of a contractual duty and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.

* Sec. 3. AS 09.65.070 is amended by adding new subsections to read:

(d) No action for damages may be brought against a municipality or any of its agents, officers or employees if the claim

general law borough or city of any class, a unified municipality established under AS 29.68.240 - 29.68.440, or a municipality established by merger or consolidation under AS 29.68.030 - 29.68.110; the term includes a public corporation established by a municipality;

(2) "village" means an unincorporated community where at least 25 people reside as a social unit.

* Sec. 4. This Act applies to all legal actions filed after the effective date of this Act.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

A CASE FOR LIMITED MUNICIPAL TORT IMMUNITY IN ALASKA

Municipal tort immunity refers to the legal doctrine by which a state legislature, as a matter of public policy, has defined specific types of municipal activities for which municipalities may not be held liable for damages. At the outset, it is important to state that no one would argue for total immunity from suit for local governments in Alaska. If a municipal vehicle injures a pedestrian or if a city fails to correct a dangerous condition on publicly owned property the local government should be held liable to pay damages to injured parties. However, for many other activities undertaken by municipalities, it is less clear whether government should be under the threat of multi-million dollar damage judgments which could devastate the operation of both large and small municipalities in Alaska.

The case for limited municipal tort immunity in Alaska is perhaps best illustrated by the so-called "Good Samaritan" doctrine. As an example of this principle, consider a physician who, returning home from his office, comes upon a man lying severely injured at the side of the road. At early common law, the physician had no legal duty to stop and attempt to aid the injured man. Moreover, if the doctor did attempt to aid the victim and, because he did not have the necessary medicines, equipment, etc., accidentally caused some additional injury, the physician could find himself the defendant in a lawsuit brought by the very person he had attempted to aid.

To avoid the undesirable consequences described above, states began to offer statutory protection from lawsuits to physicians and other health care providers who voluntarily rendered aid to persons in need of medical attention. In Alaska, the Legislature has adopted AS 09.65.090 which provides that persons attempting to administer aid in certain emergency circumstances need not fear the threat of a lawsuit if, in the course of their efforts, an accident

occurs. The public policy supporting limited tort immunity for persons rendering emergency aid is the belief that it is important to encourage such voluntary actions as essentially a public service. This is to say that we, the people, want the assurance that physicians and other persons will voluntarily attempt to render aid to those in need and that we are willing to provide a limited measure of tort immunity to encourage such actions.

Municipal governments, in undertaking many of their activities, are often acting essentially as "good samaritans". No rule of law states that a community must provide, for example, a fire inspection program designed to reduce threats to the health and safety of its citizens. Municipalities do not conduct such programs for pecuniary gain or other financial benefit. Rather, the people have in many cases decided to voluntarily provide this service to individual property owners for the common good.

No one contends that municipal officers or employees are perfectly efficient or that mistakes and accidents in the operation of, for example, fire inspection programs will not occur. If the operation of local fire inspection programs is threatened by the possibility of huge damage judgments, the people, and in turn their elected legislators, are faced with circumstances similar to the "good samaritan" situation discussed above. The uncomfortable choice for many local governments in Alaska is between maintaining, for example, the best possible fire inspection program at the risk of devastating lawsuits should a mistake be made, and simply eliminating any inspection program at the risk of allowing serious health and safety hazards to exist in the community. Faced with this untenable situation, Alaskan municipalities are asking the Tenth Legislature to provide a limited measure of tort immunity to cover situations in which local governments voluntarily undertake programs designed to protect the health and safety of their citizens.

The danger that Alaska's local governments will be forced to discontinue or severely limit programs such as building code inspections, enforcement of housing codes, fire inspections, planning and zoning functions, and various public health programs is imminent. In all of the activities listed above, municipalities are, in essence, acting as volunteers or "good samaritans" by extending services to their citizens for the protection of the public health, safety and general welfare. In the case of fire inspection activities, recent decisions by the Alaska Supreme Court indicate that if a municipality undertakes an inspection program it may be held liable for (posssibly) millions of dollars in damages in the event that a mistake is made. See,

for example, Adams v. State, 555 P.2d 235 (Alas. 1976), and City of Fairbanks v. Nordale Hotel, Inc., 555 P.2d 248 (Alas. 1976).

In response to these cases, some local governments in Alaska have already considered the possibility of discontinuing fire inspection activities. In addition, it appears that the reasoning advanced by the Supreme Court in the Adams and Nordale cases could be expanded to cover building, housing, and public health inspection programs and, perhaps, damages allegedly caused by the issuance of various permits which are later discovered to contain error. For example, the Supreme Court of Washington has upheld a $2.8 million dollar judgment against the City of Seattle based on the allegedly negligent issuance of a building permit. See, Haslund v. City of Seattle, 547 P.2d 1221.

In conclusion, it is important to stress that the goal of local governments is not to leave injured parties without a remedy in the event of an accident. As noted above, the proposed legislation does not relieve municipalities from liability based on actions that are proprietary in nature such as the operation of municipal vehicles or the maintenance and operation of municipal property. In most other situations, a municipality will be only one of several possible defendants. For example, if a building in a municipality is destroyed by fire, the injured party may have an action against (1) the person or persons directly responsible for the blaze, (2) the person's employer (and his insurance company), and (3) possibly against the manufacturer of any materials and equipment which are discovered to have been negligently constructed or improperly installed. However, given the absence of any municipal immunity, any plaintiff's attorney will also join the municipality as a defendant if it can be alleged that there has been any failure to properly inspect or certify the building or equipment as part of a municipal fire inspection program.

By extending a limited degree of tort immunity to municipalities to cover activities such as fire inspection programs, the injured party in a situation such as the one described above is not left without a remedy. Rather, the burden of liability is merely shifted from municipalities to others who, in most cases, are more directly responsible for the accident. Viewed in another light, the choice for the individual property owner is to (1) look to his private insurance carrier or to other responsible parties, not including a municipality, in the event of, for example, a fire and be assured that he will have the benefit of a local fire inspection program or (2) risk the loss of local fire prevention/inspection services due to the threat of tort

liability. Faced with such a choice, municipalities in Alaska have turned to their state legislators to ask for limited tort immunity to ensure the continuation of essential local services, such as fire, building and health programs, at a cost which is within the reach of local government taxpayers.

TDB:kh

Members files

CITY OF VALDEZ

P. O. BOX 506
PHONE: (907) 835-4313

ZIP CODE: 99686

March 25, 1977

Representative Terry Gardiner
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: HB 354 and SB 249

Dear Representative Gardiner:

The subject bills provide tort liability protection for municipalities. We urge you to support these bills.

Because of two recent court decisions, i.e. the Gold Rush fire and Nordale Hotel fire, municipalities are now confronted with liability they never had before. As a result, the municipalities are confronted with two major problems. One, the cities are finding they can no longer obtain insurance; or, if they are fortunate enough to get insurance, the premium costs are prohibitive.

With the constant increase in the cost of providing even minimal services, the addition of this type of liability and its attendant costs is rapidly forcing many communities to the brink of bankruptcy.

When government becomes so expensive that no one can afford it, our whole system will break down. It is vital that municipalities be held responsible for only those acts which are willful, negligent or malicious.

Very truly yours,

Herbert W. Lehfeldt
City Manager

HWL:ss

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D – JUNEAU 99811

April 11, 1977

The Honorable Terry Gardiner
Chairman, Judicial Committee
State House Of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

In response to your letter of April 4, I am pleased to give you some observations concerning HB 354.

Unfortunately, I cannot predict what the cost saving impact would be to municipalities by reason of adoption of the bill. As you know, rates are predicated upon anticipated experience and it is quite fair to assume that a substantial reduction in liability exposure will result from the adoption of the bill and that it will have a substantially favorable impact on the rates charged municipalities for their liability coverage. However, I am not able to predict with precision the dollar value of the impact.

I think perhaps the more important effect of the adoption of the bill will be the availability of the coverage.

Currently, insurance carriers have expressed extreme reluctance in writing liability coverage for municipalities because of the varied kinds of exposures which this bill will exclude. By excluding these exposures, the carriers will then be able to provide general liability coverage that is not now being provided.

I believe that the bill is a very necessary adjunct to the proper functioning of our municipalities in this State and ought to be favorably considered by your committee.

Yours cordially,

Richard L. Block
Director

RLB/wj/1/3

Members file

Alaska Society of Professional Engineers

DONALD R. DENT JR. P.E.
National Director
4135 Hood Court
Anchorage, Alaska 99503

Tel.(907) 277-8027
(907) 272-5451

March 23, 1977

Representative Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Ref: HB 354, Act Relating to Suits Against Local Governments.

Dear Representative Gardiner:

Upon reading HB 354 Section 1, the intent appears to clean up the language of the existing statute.

Section 2 appears reasonable because of the emergency nature of action by Fire Departments.

Section 3 seems to be the crux of the whole act. It removes all courses of action which would be a cause of action granted under Section 1. Specific paragraphs, AS 9.65.070(d),(2),(3) and (4), are presently the basis for actions against a government entity. I'm not an attorney, but as I remember there is, under common law, a doctrine called Respondeat Superior, in which a "master" is liable for the torts of his "servants", if the servant is acting within the scope of his employment. Also under common law every person who commits a tort is personally liable to the individual whose person or property is injured or damaged by the wrongful act, and is not relieved of tort liability by establishment that the act was committed under the direction of someone else or in the course of employment by another. It appears that the paragraphs (d),(2),(3) and (4) are removing the Municipality and its employees from liability for any wrongful acts, literally, putting them above the law. Societies which have an extra - legal elite group of people orentities who can act wrongfully, with impunity, are usually termed Fascist. I can't believe that this is really what was intended when the Bill was introduced.

Everyone is bemoaning the fact that the bureaucracy at all levels of government is growing with seemingly no abatement. I believe that this Bill in its present form removes the last vestiges of containment and control at the local level. The rights of the citizenry of access to the courts for redress would be terminated. In Anchorage only one in ten municipal employees I know really thinks of themselves as public servants, certainly a minority in the massive municipal machine.

Very truly yours,

ALASKA SOCIETY OF PROFESSIONAL ENGINEERS

Donald R. Dent, Jr., P.E.
National Director
Legislative Chairman

DRD/ssm

3/31/77

Introduced: 3/15/77
Referred: Judiciary

BY NAKAK, HAUGEN, DUNCAN, ELIASON, FREEMAN AND SNIDER

IN THE HOUSE

HOUSE BILL NO. 354

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to suits against local governments; and providing for an effective date."

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

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(c) No action may be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort or breach of a contractual duty and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.

* Sec. 3. AS 09.65.070 is amended by adding new subsections to read:

(d) No action for damages may be brought against a municipality or any of its agents, officers or employees if the claim

have knowledge or should-ability
To acquire " and did not abate problem then liable.

(1) is based on a failure of the municipality, or its agents, officers, or employees, when the state is neither owner nor lessee of the property involved,

(A) to inspect property for a violation of any statute, regulation or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made; or

(C) to abate a violation of any statute, regulation or ordinance, or a hazard to health or safety discovered on property inspected;

(2) is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based upon the grant, issuance, refusal, suspension, delay or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

(4) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, negligent misrepresentation, deceit or interference with contract rights;

(5) is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis; or

(6) is based upon the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements.

(e) In this section

(1) "municipality" means a home rule borough or city, a

general law borough or city of any class, a unified municipality established under AS 29.68.240 - 29.68.440, or a municipality established by merger or consolidation under AS 29.68.030 - 29.68.110; the term includes a public corporation established by a municipality;

(2) "village" means an unincorporated community where at least 25 people reside as a social unit.

* Sec. 4. This Act applies to all legal actions filed after the effective date of this Act.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Members files

CITY OF VALDEZ

P. O. BOX 506
PHONE: (907) 835-4313

ZIP CODE: 99686

March 25, 1977

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Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: HB 354 and SB 249

Dear Representative Gardiner:

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Because of two recent court decisions, i.e. the Gold Rush fire and Nordale Hotel fire, municipalities are now confronted with liability they never had before. As a result, the municipalities are confronted with two major problems. One, the cities are finding they can no longer obtain insurance; or, if they are fortunate enough to get insurance, the premium costs are prohibitive.

With the constant increase in the cost of providing even minimal services, the addition of this type of liability and its attendant costs is rapidly forcing many communities to the brink of bankruptcy.

When government becomes so expensive that no one can afford it, our whole system will break down. It is vital that municipalities be held responsible for only those acts which are willful, negligent or malicious.

Very truly yours,

Herbert W. Lehfeldt
City Manager

HWL:ss

M E M O R A N D U M

TO: File: Petersburg - attn: City Mgr.

FROM: L.B. Jacobson LBJ

DATE: March 4, 1977

RE: City of Petersburg/Limited Liability Legislation

RELEVANT LITIGATION - during the last five years the City of Petersburg was actively involved in three judicial matters designated as a party defendant which would have been eliminated altogether by the legislative adoption of the proposed bill conferring limited liability to local governments. The first one was Bell vs. Petersburg and 3 arresting police officers and involved a suit for $3,000, plus $25,000 in punitive damages predicated on an allegedly false arrest and assault and battery of Mr. Bell who was picking up marijauna at the post office. Petersburg prevailed on summary judgment, but only after the expenditure of approximately $2,500 in attorney's fees in defending the action. The next one was Rosi v. Petersburg General Hospital and involved an allegation of slander to the professional reputation of Dr. Peter Rosi by reason of the hospital board's failure to admit to practice at the local hospital. The case was settled out at $5,500 plus attorney's fees in the approximate amount of $2,000 incurred in defending the action. The last one was Musewski vs. Cornelius and the City of Petersburg, involving the City of Petersburg's alleged negligence in failing to enforce its local building inspection code when a building on tidelands' pilings collapsed. The case is currently in litigation and Petersburg has liability exposure in the amount of approximately $10,000 and has expended approximately $2,500 in its own attorney's fees defense costs to-date.

In the wake of the Adams and Jennings cases, the City of Petersburg will probably opt for repeal of its Uniform Building Code, plumbing code, and National Electrical Code rather than go to the expense of hiring at least one additional person to cover the inspection duties. The cost of such person would be in the magnitude of $22,000 per year minimum with an estimated additional cost of approximately $6,000 per year attributable to office space, inspection equipment, and clerical support.

What the City of Petersburg will do with respect to National Fire Prevention Code adopted by local ordinance remains to be seen. Since the City has a volunteer fire department with only one paid employee, a viable possibility

would be the discharge of the fire chief, donation of the fire equipment to the volunteer fire department and a simple annual contribution to the fire department scheduled as a matter of budget appropriation.

Because of the implications of the Adams and Jennings cases, the Petersburg City Council has resolved to discontinue its rendition of gratuitous fire protection service outside the City limits.

For the same reasons, the City of Petersburg has refused to sign a "Mutual Aid Agreement" proposed by the Alaska Division of Aviation which would, in part, require the City of Petersburg's personnel and equipment to respond to fires and other emergencies at the State-owned airport outside of the City limits.

LBJ:ss

M E M O R A N D U M

TO: File/Limited Liability for Municipalities

FROM: L.B. Jacobson

DATE: March 31, 1977

RE: Action in Other Communities

KAKE - instructed by legal counsel not to adopt fire prevention code, Uniform Building Code, National Plumbing Code, and National Electrical Code.

CRAIG - instructed by legal counsel to terminate enforcement of local fire prevention ordinance. Also instructed not to undertake courtesy Public Health Service fire inspection program under the auspices of the City, but the matter was partially resolved and the program revived on a basis limited to private residential dwellings by use of a waiver.

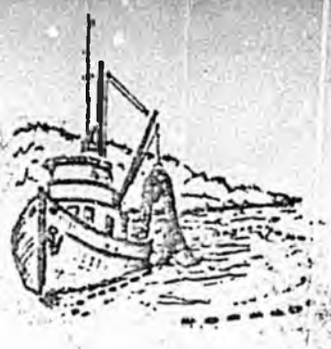
YAKUTAT-has no police department and doubtful if personnel will be hired for same under present circumstances. Repealed the local ordinance adopting the National Fire Prevention Code.

WRANGELL-began to implement a widespread condemnation program to abate dangerous structures in 1975 which program enjoyed only a limited decree of success and was rescinded altogether by reason of enforcement difficulties and uncertainties associated with the legal consequences for damages.

HOONAH- has fire prevention codes and building codes adopted by local ordinances, but they are not enforced.

SKAGWAY-has adopted housing, plumbing and electrical codes as well as fire prevention code by local ordinance but has spasmodic enforcement and, like other towns, cannot affort to staff with full-time qualified building inspector. Is presently in litigation over the issuance and revocation of a building permit where the damages are nominal and the relief sought is removal of a portion of a garage encroaching in the set-back, but attorney's fees are estimated at $2,000. In Davis v. Skagway, the City suffered liability exposure in the amount of $85,000 for slander and damage to the professional reputation of a superintendent fired during the second year of a three-year contract. City ended up paying for the third-year's salary, but primary issue was damage to reputation and it took an appeal to the Alaska Supreme Court to reverse the decision and well in excess of $20,000 in attorney's fees were expended during the lengthy trial and protracted course of appeal.

CITY OF CRAIG



P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232

RESOLUTION NO. 77-8

WHEREAS, In light of recent Alaska Supreme Court decisions, municipalities will be liable for negligence respecting building code and fire safety standards if inspections are conducted, and

WHEREAS, The only realistic local alternative is for city government to not conduct inspections at all, and

WHEREAS, This would serve to perpetuate the growth of unsafe buildings in Alaskan communities, and

WHEREAS, Legislation has been proposed which would amend the Alaska statutes to grant cities a measure of immunity from liability in these areas,

THEREFORE, BE IT RESOLVED by the Council of the City of Craig that we hereby go on record as fully supporting said proposed legislation, and that we urge the Alaska State Legislature to take affirmative action towards its passage during this legislative session.

Adopted this 17th day of March, 1977.

Certified by:

Marvin L Yoder
Mayor

Kirk M Thomas
Councilperson

Elizabeth Dennis
Councilperson

Ingles H. Paul
Councilperson

James F. Sprague
Councilperson

Attested by:

Ray Thomas
City Clerk

Ted Burns — Anc City Att
Lee Sharp — JNU Attorney
Jake Jacobsen - local Attorney - Craig
Sam Cox in
Tom Koester

Al Nakak
Ted Burns - Att Anchorage

Muns remain liable for prop. activities

Permissive — Build codes
Zoning
Muns. are pheripherally responsible

Jacobsen

Targets Schaible case 1960

No insurance for liabilities available

Oct, 1976 Adams } Gold Rush
Jennings } Nordale

If you undertake inspection A, ascertain all dis. Hazards
B. Take all approp. actions to abate

Connor — Minority Opinion

House Judiciary
March 31, 1977

The meeting was called to order at 3:25 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, Specking and Brown. Mr. Dankworth and Mrs. Rudd were absent..

HB 354 Suits against local governments HB 354

Rep. Al Nakak, sponsor for the bill, was here to speak briefly about the bill.

Ted Burns, Assistant Attorney for the Municipality of Anchorage, was here to testify and speak in support of the bill (except for Section 4). They feel that law suits should be filed against the parties most directly responsible for injuries, not against municipalities just because they neglected to make a fire-safety inspection, etc.

L.B. Jacobson, an attorney from the firm of Robertson, Managle, Eastaugh and Bradley was here. His firm helps represent such communities as Klawock, Craig and Petersburg. He came today because he feels stongly about this legislation and because Petersburg had asked that he come to speak in support of the bill.

Lee Sharp, Attorney for the City and Borough of Juneau was here to give general support to the bill (except for section 4).

Tom Koester, from the Dept. of Law, was here. He indicated that the question is "How much government is going to insure for private wrongs?" The legislature needs to decide what government can be liable for. The Dept. of Law would be in the position of feeling that the wrong-doer should pay... not the government that is in some way distantly related to whatever accident.

The meeting was adjourned at 4:55 p.m.

House Judiciary
April 12, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, and Dankworth. Mr. Speckingcame late. Mr. Brown and Mrs. Rudd were absent.

HB 354 Suits against local governments HB 354 SB 249am
SB 249am

Jack Chenowith from LAA was here to explain what the Senate did to SB 249. Basically, they removed subsection 4. There was a general discussion about HB 354 and SB 249am, which are companion bills.

Mr. Eliason moved that SB 249am be moved out of commitee. Since there was no objection, this was done.

HB 204 Children's Laws and Related Judicial Proceedings HB 204

Andy Brown from LAA was here to explain the changes made to HB 204 at the request of the committee. There were general questions and other suggestions and amendments were discussed and made.

Mr. Eliason moved that CSHB 204 as amended be moved out of committee. The motion carried and this was done.

HB 347 Liability for the destruction of property by minors HB 347

The committee took time to read and think over the committee substitute that had been drafted for HB 347.

Mr. Elaison moved that CSHB 347 be moved out of committee. There was not objection, so this was done.

The meeting was adjourned at 4:25 p.m.

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

FIRST NATIONAL BUILDING
425 G STREET
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

February 25, 1977

Mr. Don M. Berry
Executive Director
Alaska Municipal League
204 North Franklin
Juneau, AK 99811

Dear Don:

We have your letter and enclosures regarding proposed legislation relating to suits against local government. At the same time, we received a certified mail - return receipt requested letter from the State Fire Marshal "deferring" responsibilities for fire prevention inspections and enforcement of State Fire Safety regulations to the City of Palmer. For your more ready reference I am enclosing herewith a copy of Mr. Hendrie's letter and our reply.

The size of jury verdicts, and the ever-expanding areas of governmental liability which are being found by the Courts throughout the nation have created a situation where municipal government has become a target defendant. Palmer cannot afford all of the necessary insurance, even if it were available. Some type of curb on this raid on the taxpayers is absolutely essential. My only feeling is that the proposed legislation may not go far enough.

Our city administration feels that tax monies should be expended to effectuate the general public good and that programs, such as fire inspections, should not have to be abolished because we are unable to give sufficient budget for a 100% program.

Very truly yours,

BISS AND HOLMES
Wasilla Office

Burton C. Biss

Encs.

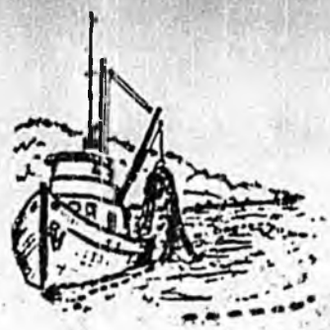
BCB:esp

CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232



March 10, 1977

L.B. Jacobson, Attorney at Law
Robertson, Monagle, Eastaugh & Bradley
Box 1211
Juneau, Alaska 99801

Dear Mr. Jacobson:

Thank you for your letters regarding Senate Bill No. 89 and your proposed bill regarding suits against local government. These were read and discussed by the City Council, and we felt both were valuable pieces of legislation.

We did pass Resolution No. 77-7 in support of SB 89, sent it to our legislative deligation, and received favorable responses from all of them. I will enclose a copy of that resolution.

Another resolution has been prepared for action at our March 17 city council meeting dealing with the proposed bill limiting liability for municipalities. I will forward that to you and to the Alaska Municipal League as soon as possible.

In answer to your questions regarding Craig's problems with code enforcement, we have not yet been sued or threatened with suit because of a lack of enforcement following safety inspections. To be realistic, if inspections were conducted and violations enforced to the letter of the law in all health and safety areas, we would probably be without any businesses in Craig, which would involve the loss of all sales tax revenue. This amounted to $47,224 in fiscal year 75/76. Furthermore, we have nobody in Craig qualified to conduct inspections of the thoroughness that would have to be involved in order to protect the city from liability; someone would have to be imported for this. It would surely involve at least one full-time position in Craig to regularly inspect all businesses and enforce compliance with all applicable codes. I would estimate paying a person with these

qualifications at least $20,000 a year. Considering all the related administrative and legal expenses, I doubt if an increase of two mills in our property tax levy would cover the complete cost to Craig of enforcing the codes with the standards prescribed by the Alaska Supreme Court.

Again, thank you for keeping us informed about these pieces of legislation. Please let us know if there is anything further we can do.

Sincerely,

Marvin L. Yoder

Marvin L. Yoder
Mayor

Enclosure

cc: Alaska Municipal League

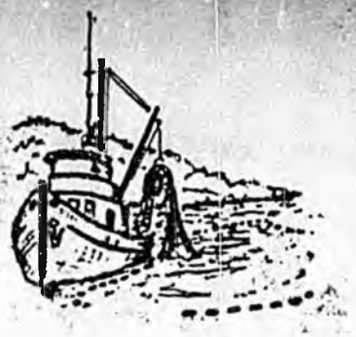
MLY/kt

CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232



March 18, 1977

L.B. Jacobson, Attorney at Law
Robertson, Monagle, Eastaugh & Bradley
Box 1211
Juneau, Alaska 99801

Dear Mr. Jacobson:

Enclosed is a copy of Resolution No. 77-8 concerning municipal liability. This was passed at the City Council meeting last night, and copies have been forwarded to our area legislators. Wishing you luck with this one!

Sincerely,

Karen Thomas

Karen Thomas
City Clerk

cc: Alaska Municipal League

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1977

Marvin Yoder, Mayor
City of Craig
P.O. Box 23
Craig, Alaska 99921

Dear Mayor Yoder:

Thank you for the copy of Resolution No. 77-8 in regard to the liability of municipalities. Legislation concerning this topic has been introduced in the Legislature. Rep. Al Nakak of Nome has introduced this legislation in the House and is presently in the House Judiciary Committee.

This is a very complicated area both effecting municipalities liabilities and the rights of individuals recover for damages. I have not decided what I will do in voting on this legislation at this time. I consider it a very complicated area and will give it great scrutiny before making a decision.

As Chairman of the House Judiciary Committee, I have scheduled a meeting on the bill in order that everyone concerned can present testimony and information on the legislation. Regardless of my personal feelings on the bill one way or the other, it is encumbant on the Legislature to address problem areas of legislation.

I will give a copy of your Resolution to the Committee Members. I hope you will forward more specific information about how this legislation will benefit the community of Craig and what present problem the City is experiencing that this legislation will resolve. I think that information will go along ways towards gaining support for the legislation.

Sincerely,

Terry

Terry Gardiner
State Representative
Alaska Legislature

Jake Jacobsen

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

March 16, 1977

Ronald A. Hendrie
State Fire Marshal
State of Alaska
Department of Public Safety
Division of Fire Prevention
Pouch N
Juneau, Alaska 99811

Re: Enforcement of State Fire Regulations; your letter of February 14, 1977.

Dear Sir:

As Fire Chief Bennett has informed you by telephone, we cannot accept responsibility for enforcing the State fire safety regulations within the Municipality of Anchorage, or even within those portions of it where tax-supported fire suppression services are provided.

Under the former City of Anchorage Code, State fire safety regulations were incorporated into Municipal law, and were enforced by the City Fire Marshal. The Municipal Assembly, however, deleted that provision from the new Municipal Code. This amounts to a legislative policy decision to enforce only our own building and fire prevention codes in the areas in which such codes are effective.

At present, these codes are effective only within the Anchorage Bowl area. In locations such as Chugiak, Eagle River and Girdwood, although they have fire suppression services, the codes are not in effect, and our Fire Marshal is not authorized by Municipal law to engage in inspection and enforcement there, nor is he budgeted to do so.

At the next regular election, in the fall of 1977, the citizens of the Municipality will have an opportunity to vote on the question of expanding our building and fire

prevention codes areawide. If the voters approve, we will thereafter enforce the Municipal codes throughout Anchorage, but not the State regulations, since the Assembly did not incorporate them into our law.

We have no objection to your inspecting and enforcing State regulations upon State-owned and leased property within Anchorage, as you have said that you will do. For the reasons stated above, however, we must defer not only in those matters, but in all enforcement of State fire safety regulations, to your office.

Sincerely yours,

Douglas G. Weiford
Municipal Manager

DGW:SGD:kw

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FIRE PREVENTION

JAY S. HAMMOND, GOVERNOR

Richard L. Burton
Commissioner

POUCH N - JUNEAU 99811

February 14, 1977

CERTIFIED - RRR

M.B. Winegar, Manager
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Subject: City and Borough of Juneau
Fire Protection Districts
Fire Prevention Inspections
and Enforcement of Fire
Safety Regulations

Dear Mr. Winegar:

This is to advise you that responsibilities for fire prevention inspections and enforcement of state fire safety regulations as provided by AS 18.70.090 and regulations promulgated under AS 18.70.080 i.e. specifically Alaska Administrative Code, Title 13 Public Safety Part 2 Fire Prevention, Chapter 50 - Codes and Standards including further revisions thereto, within the City and Borough of Juneau Fire Protection Districts, is deferred to your local jurisdiction. Copies of applicable statutes and regulations attached.

In keeping with our current policy, the Department of Public Safety will continue to inspect within the City and Borough of Juneau Fire Protection Districts (1) state-owned and state leased facilities and (2) state licensed facilities upon request of the licensing agency or the local entity. All inspections under (1) and (2) will be conducted jointly with local authorities whenever possible.

Should you desire clarification on any of the above please contact me at 465-4331 or write Pouch N, Juneau 99811.

Very truly yours,

Ronald A. Hendrie

RONALD A. HENDRIE
State Fire Marshal

RAH:GRC:smb

c: Doug Boddy, Fire Coordinator (Certified - RRR)
City and Borough of Juneau
& Chief, Juneau Volunteer Fire Department

Subject: City and Borough of Juneau Fire Protection Districts
Fire Prevention Inspections and Enforcement of Fire
Safety Regulations

c: Jack Mason, Chief (Certified - RRR)
Glacier Volunteer Fire Department

John Ferro, Chief (Certified - RRR)
Douglas Volunteer Fire Department

Dick Keithahn, Chief (Certified - RRR)
Auke Bay Volunteer Fire Department

Allan R. Parce, Chief (Certified - RRR)
Lynn Canal Volunteer Fire Department

enclosures: AS 18.70.080
AS 18.70.090
13 AAC Chapter 50

c: Deputy Fire Marshal
Gordon E. Brunton
Southeastern Region

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

FIRST NATIONAL BUILDING
425 G STREET
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

February 25, 1977

State of Alaska
Department of Public Safety
Division of Fire Prevention
Pouch N
Juneau, AK 99811

Attention: Ronald A. Hendrie, State Fire Marshal

Subject: City of Palmer Fire Prevention Inspections and Enforcement of Fire Safety Regulations

Dear Sir:

Upon receipt of your letter of February 14, 1977 deferring to the City of Palmer the State's responsibilities for fire prevention inspections and enforcement of the State Fire Safety Regulations, the City Manager requested that I respond on behalf of [illegible]

We do not have [illegible]nnel nor the budget to undertake this program. We have not done this in the past nor do we plan to undertake this responsibility in the future. Some years ago when the question of the adoption of the State Fire Safety Regulations came up before the City Council, it is my recollection that State representatives were present. I pointed out to the City that if such responsibilities for inspection and enforcement were undertaken by the City, it would also be assuming the areas of liability. The Council declined to undertake inspections and enforcement at that time.

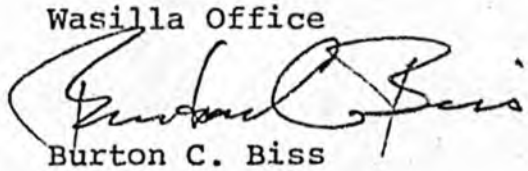
The City of Palmer isn't insured against this type of liability and cannot afford such insurance even if we had the personnel and budget to undertake the program. We must therefore defer responsibility for fire prevention inspections and enforcement

of the State Fire Safety Regulations back to the State.

Should you desire clarification on any of the above please contact me at 376-5318 or write me at the letterhead address.

Very truly yours,

BISS AND HOLMES
Wasilla Office



Burton C. Biss
City Attorney for the
City of Palmer, Alaska

Certified Mail No. 356167
Return Receipt Requested

BCB:esp

cc: William E. Curtis
Daniel M. Contini, Jr.

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

April 4, 1977

Dick Block
Commissioner of Insurance
Pouch D
Juneau, Alaska 99811

Dear Commissioner Block:

In relation to HB 354 the Committee has requested your analysis of the bill in terms of what effect it would have on insurance availability and cost to municipalities.

There has been testimony presented to the Committee that the insurance rates for municipalities have become extremely high if not impossible in some cases. The Committee is interested in some type of information which may reflect what the change in insurance policies or rates in issuance of policies would be if HB 354 or a similar bill were enacted into law.

Do to the lateness in the session I would appreciate your earliest return of some comment on this.

Sincerely,

Terry Gardiner

Terry Gardiner
State Representative
Alaska Legislature

enclosure

RESOLUTION 635 - R
CITY COUNCIL
CITY OF PETERSBURG, ALASKA

WHEREAS the City of Petersburg has suffered periodic judicial harassement from claims arising from or related to building inspections, enforcement of Ordinances and regulations, denials of licenses and permits, false imprisonment, and other interference with the policy decisions which are within the discretionary functions of the City; and

WHEREAS the City of Petersburg is encountering increased difficulty in obtaining liability insurance coverage adequate to provide for the scope of its' Muncipal functions; and

WHEREAS the City of Petersburg provides extra-territorial police and rescue service on a gratuitous basis, and further, is being requested by the State of Alaska to enter into a mutual aid agreement of emergency Public Safety requirements at the State Airport and for back-up assistance from the Alaska State Troopers with respect to emergency response outside of Petersburgs Municipal limits.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Petersburg that;

the City of Petersburg endorses a concept of a legislative solution similar to the Federal Tort Claims Act and State Immunity as prescribed in AS 09.50.250 as may be amended by SB 151, and

the City of Petersburg unequivocally urges the Alaska legislature to adopt "An act relating to suits against local government" amending AS 09.65.070 to grant limited immunity to local governments respecting building inspections, enforcement of Ordinances, the exercise of discretionary functions, licenses and permits, false imprisonment and false arrest, extra-territorial services provided on a gratuitous basis, and services performed by the Muncipality persuant to request or contract with the State of Alaska.

PASSED AND APPROVED by the City Council of the City of Petersburg, Alaska

This 1 day of March, 1977

Mayor

ATTEST:

City Clerk

CITY OF HAINES
PHONE 766-2571 — POST OFFICE BOX 239 — HA

March 16, 1977

Mr. L. B. Jacobson
Robertson, Monagle, Eastaugh
& Bradley
P.O. Box 1211
Juneau, Alaska 99802

Re: Proposed Legislation Limiting Municipal Liability
"An Act Relating To Suits Against Local Governments"

Dear Mr. Jacobson:

In response to your request for input on the above-entitled legislation, the Council of Haines strongly endorses the passage of most of its provisions, as indicated by the Resolution sent to you last week. We have several comments to offer concerning the effects of the City's exposure to liability in our community; firstly, I will attempt to answer the questions articulated on page four of your letter to Jim Eide.

(1) The City of Haines has not been sued in 20 years.

(2) Officials and employees of the City of Haines receive a frequent barrage of threats of litigation, particularly arising from both enforcement and non-enforcement of zoning laws, provisions concerning hazardous buildings, road conditions limiting access for emergency vehicles, charges of misrepresentation (usually because of poor or unclear communication). It is a rare week when somebody associated with the City is not reminded of the possibility of a lawsuit arising from some situation or another.

(3) In July, 1976, the Superintendent of Public Works redflagged four structures as hazardous buildings. The owners of the buildings were sent letters notifying them that they should either repair or demolish the building or request a Council hearing after which the Council could order demolition. However, to date, nothing has been done to enforce these requests, chiefly because of uncertainty as to whether present City employees would be considered qualified to undertake building inspection duties. By City Ordinance, the Superintendent of Public Works is authorized to condemn hazardous buildings. However, there has been considerable discussion about the advisability of having a Superintendent of Public Works undertake this duty, since he is otherwise not expected to have any expertise in structural engineering. It seems clear that in case a decision or order were to be challenged, it must be possible to demonstrate the inspector's qualifications, but the

State is apparently reluctant to define minimum qualifications for a building inspector.

Because of the same uncertainty, the City of Haines has yet to adopt any building code. We do not wish to have laws on our books which we are not equipped to enforce. We have joined the "Small Towns Institute" in the hope that other communities of comparable size might have ideas for a less stringent code than either the National Building Code or the Uniform Building Code. Even if we were to adopt a code, it is doubtful whether we would find a single individual in Haines of sufficient expertise to undertake structural, plumbing and electrical inspections. In a town this size, the most qualified individuals are likely to be those in business in these fields, who would have a conflict of interest if they were to become inspectors. In addition, the Council is understandably reluctant to incur the expense of an inspector because of Haines' well known financial limitations. However, probably the most important factor in considering the adoption of a building code has been uncertainty over the increased liability associated with its adoption, not only because of possible challenges to the inspector's qualifications, but because of possible liability for failing to discover or disclose a violation of the code. Obviously, in a town which has had no building code, the adjustments involved in following a code would be considerable, and feelings among the citizens are likely to be volatile unless it were done absolutely consistently and by individuals whose authority would be difficult to question. The City adopted the Uniform Fire Code several years ago, but it is not systematically enforced.

In summary, the City of Haines has never taken a strong stand in enforcing codes intended to promote public safety, in spite of some rather flagrant examples of hazardous conditions, because it simply cannot afford the risk of losing a suit for damages. Necessary precautions which municipalities could undertake as well as limitations on possible awards for damages arising from negligent enforcement are all too ambiguous. It is unrealistic to expect a small town City Council, whose members are burdened with many other issues, to achieve enough sophistication in the field of code enforcement to be able to confidently direct a reasonable course of consistent enforcement in the face of the extremely high risk imposed by the attitude of the Supreme Court, when accompanied by the lack of positive direction from the law itself concerning inspections and authority therefor. The resultant loss to public safety and aesthetics is apparent to anyone walking through the streets of Haines.

(4) It is almost impossible to estimate added costs necessary for the insurance and activities required to insure an unquestioned standard of code enforcement, but it would be considerable even if a building code were not adopted. If a building code were aopted and building inspectors hired, the cost would be a minimum of $20,000 per year.

In addition, the City has hesitated to offer certain community services because of the risk of liability associated with them. This winter, citizens requested that a street be closed to motor vehicles and dedicated to sledding, so that kids would be less likely to be found careening down the center of a street, where it is difficult for drivers to see them. Based on experiences of municipalities

in Juneau and Ketchikan and on the possibility of a suit because of increased response time required by emergency vehicles having to use an alternate route because of the blocked-off street, the Council ultimately declined to allow a City street to become a sledding hill.

In regard to the proposed Section AS 09.65.070 (d) (5), there has been some concern that if the volunteer fire department were fighting a fire outside city limits when a fire occurred inside, the property owner inside city limits could sue the department for delayed response time in arriving at his property. In that case, the City taxpayer in essence, supports the department through property taxes and the property owner outside the City does not (although he does, through sales tax whenever he shops within city limits). Since we are a Third Class Borough, the State will not allow a fire district to be formed outside the City.

If you have additional questions or would like additional input, please do not hesitate to ask.

Sincerely,

Wendy Hyde

Wendy Hyde
City Clerk

WH

cc: Mr. Don Berry, Municipal League
Mr. Norman C. Banfield

CITY OF HAINES
TELEPHONE (907) 766-2231 – POST OFFICE BOX 239 – HAINES, ALASKA 99827

RESOLUTION NO. 3777

A RESOLUTION ENDORSING "AN ACT RELATING TO SUITS AGAINST LOCAL GOVERNMENT"

WHEREAS, the cases of Adams v. State and State v. Jennings have demonstrated that the Supreme Court of the State of Alaska will hold government entities to common law standards of liability for negligence in enforcing codes intended to promote public safety; and

WHEREAS, the reasoning behind the judgments in these cases indicates that government bodies may be exposed to increased liability in carrying out all discretionary functions including the granting of licenses and permits, including zoning permits and variances; and

WHEREAS, such liability discourages local governments from undertaking functions intended to promote general welfare, such as inspections for the promotion of public safety; and

WHEREAS, such liability will dramatically increase both the cost of liability insurance for municipalities and the necessity of their maintaining it; and

WHEREAS, the interpretation of local government codes and inspections to mean that the government is totally responsible for the implementation of safety standards, rather than that the government may contribute to the process of insuring conditions of general safety places an inordinate financial responsibility on already-overburdened local governments; and

WHEREAS, the effect of such liability in a municipality continuing to enforce building, fire and safety codes is to place an inordinate financial burden on the taxpayer in order to benefit a very specialized class of persons, namely those injured as a result of unsafe conditions in a structure inspected or under the jurisdiction of inspection by an agent of the municipality; and

WHEREAS, in consideration of the aforementioned fact, proposed legislation has been drafted which would afford immunity to municipalities from actions for damages related to certain activities;

THEREFORE, BE IT RESOLVED BY THE HAINES COMMON COUNCIL that we fully endorse the proposed "Act Relating to Suits Against Local Governments" with the exception of Section AS 09.65.07 (d) (4);

BE IT FURTHER RESOLVED that in consideration of the possibly disastrous effects of total immunity from suits arising from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, intentional or negligent misrepresentation, deceit, or interference with contract rights; we recommend that suits based on the aforementioned charges be allowed against local governments or their agents, but that damages therefor be limited to an absolute maximum of $20,000.

DATED: March 7, 1977

Gail J. Wallace, Mayor

CERTIFICATE

I, Wendy J. Hyde, being the duly appointed and acting City Clerk of the City of Haines, Alaska certify that the foregoing is a true and correct copy of a resolution adopted by the Common Council at a regular meeting held March 7, 1977. Said meeting was duly called and held with a quorum at all times.

Wendy J. Hyde, City Clerk

SEAL

HB
392

SUBJECT: Senate Bill No. 285 - Medical Examiner's Bill
House Bill No. 392

In reviewing this proposed legislation, several basic questions arise: We should start with the premises that there should be a Medical Examiner employed by the State of Alaska. The Court System, according to Susan Burke, feels from an administrative standpoint that the "office" should not be controlled by the Court. Many of the local pathologists are of the opinion that a medical examiner should be established. In talking with members of other departments, including Chiefs, the consensus seems to be that a medical examiner should be established but that it should be a separate entity free from political influence as well as possible pressures from law enforcement and the Court. With this in mind, we can look at the bill as written. Comments below should be read with the proposed bill.

Chapter 52. STATE MEDICAL EXAMINER

Section 19-52.010. Should the Medical Examiner's office be a part of the Department of Public Safety or would it be better as an independent agency, such as the Public Defender? The Public Defender, as you know, is under the Governor's office.

Section 18.52.020 ALASKA MEDICAL EXAMINER COMMISSION

Should one of the Commission members be a representative of

Municipal Police Agenices for input regarding problems unique to their agencies?

Section 18.52.025 MEMBERSHIP, POWERS AND DUTIES OF COMMISSION

(a) If the Chairman of the Commission is the Commissioner of Public Safety, will this have the appearance of "Police Control" over the Medical Examiner?

(b)

Section 18.52.030 APPOINTMENT AND QUALIFICATIONS OF STATE MEDICAL EXAMINER.

(a) Should the Medical Examiner be appointed by the Governor on a "staggered" basis to avoid the appearance of political pressure?

(b) There are currently two "Board Certified" Forensic pathologist in the State of Alaska. Both of these physicians are located within the Anchorage Area and conduct autopsies on a "parttime basis." What effect will this have on the other cities within the State, both economically (transportation of bodies to Anchorage) and the need for immediate examinations?

(c) The two Forensic pathologists in Alaska are only able to do autopsies on a "parttime" basis.

Section 18.52.035 APPOINTMENT AND QUALIFICATIONS OF ASSOCIATE AND ASSISTANT MEDICAL EXAMINERS.

(a)

(b) Should the "assistant" be required to attend a prescribed number of training hours taught by a Forensic pathologist, District Attorney, Public Defender, and the Police?

(c)

Section 18.52.040 POWERS AND DUTIES OF STATE MEDICAL EXAMINER AND ASSOCIATE MEDICAL EXAMINERS.

(a)

(1)

(2) Can the police still use the FBI Laboratory which provides services (firearms, serology, hairs, fiber, etc.) at no cost to the State?

(3) See 18.52.035 (b) above.

(4)

(5) What about a "contested" cause or manner of death. Can a Coroner's Jury be impanneled to determine facts? This could be of great importance in insurance claims.

(6)

(7) See Section 18.52.100 (a).

(8)

(9)

(b)

(1)

(2)

(3) What about a Coroner's Inquest?

(4) Should the Medical Examiner be required to establish "probable cause" before a court to exhume a body?

(5) Should the Medical Examiner request the assistance in writing, stating the reasons?

(6)

(7)

(8) Should the Medical Examiner take possession of weapons or other evidence that the Police want to send to the F.B.I. or other laboratory? There are no laboratories in the State at this time that can do Fire Arms (commonly referred to as "ballistics" test) identification.

(9) Would it be better for a Judge to issue subpoenas and see to it that "rules of evidence" are conformed with?

(c)

(1)

(2) Should manner of death be determined by Coroner's Inquest?

(3)

(d)

(1)

(2) Should he also notify the nearest law enforcement agency?

(3)

Section 18.52.050 DEATHS REQUIRING DETERMINATION AND CERTIFICATION OF CAUSE AND MANNER.

(a) Should there be an option by way of coroner's inquest to determine the manner of death? This could be of assistance in our adversary system? What effect will this have on Life Insurance Benefits?

(1) See a.

(2) See a.

(3) See a.

(4)

(5) To determine if the death is "suicide" or "homicide", or "accidental" a coroner's inquest should be held. This could have an effect on "double indemnity" insurance claims.

(6) Should the Medical Examiner be allowed to negate "possible" civil litigations?

(7) See (6) above.

(8)

(b)

Section 18.52.060 NOTIFICATION OF DEATH REQUIRED

(a)

(b)

Section 18.52.070 AUTOPSY.

(a)

(b)

(c) If the death is investigated by the police, shouldn't the Agency investigating also be furnished with a copy

(d)

Section 18.52.075 LABORATORIES.

Does this mean the Medical Examiner will seize all evidence from a violent death and ask for appropriate examinations? If this section is passed, is it necessary for police investigators to respond to crime scenes?

Section 18.52.077 FORENSIC EXAMINATIONS

Is this to be a private laboratory? Is all evidence seized by compunction with a death to be furnished to the Medical Examiner (bullets, guns, etc.) so he might send them to a laboratory of his choice?

Section 18.52.080 PRESERVATION OF EVIDENCE AND CREMATION OF BODIES

(a)

(b)

(c)

Section 18.52.085 AUTHORITY TO ENTER AND SECURE PREMISES

(a) Should he first be advised by the investigating agency that possible destructible evidence has been secured?

(b) Is the Medical Examiner an "officer of the court" empowered to serve such court orders?

(c)

(1)

(2)

(3)

(d)

Section 18.52.090 DISPOSITION OF BODY AND PROPERTY

(a)

(b) Should the Medical Examiner be allowed to certify "manner of death"? Isn't it the duty of the medical examiner to determine "cause" of death and a jury or judge decide the manner?

(c) Is it the duty of the medical examiner to seize physical evidence? Should the police be required to "take possession" of personal effects (not evidence) for 48 hours? If so, and it is necessary to place a guard on the premises, who is responsible for the police officer's salary?

(d) See (c) above.

Section 18.52.100 RECORDS AND REPORTS

(a) Should insurance companies be required to obtain a Court Order to obtain these records? Would it be better to limit these records (without court order) to physicians, the court, District Attorney, and Police?

(b) See (a) above.

(1) See (a) above.

(2) See (a) above.

Section 18.52.110 DEFINITIONS

(1) Would it be better to eliminate the word "manner" and have the court decide whether the death is: (1) Homicide; (2) Suicide; (3) accidental (4) natural causes; (5) undetermined?

(2) See (1) above.

(3)

(4) Should we add: "investigative crimes" to this?

(5) See (1) above.

(6)

(7)

Section 12.65.011 CHAPTER 65 INQUESTS
ORDER OF INQUEST

Should the police be allowed to make such a request? What about those "hush areas" when contact with a District Attorney is at a minimal? Might there be reasons that an inquest would be desirable for a death occurring in a small community for reasons important to the citizens of that community?

Section 12.65.021 SUMMONING JURORS FOR INQUEST

Section 12.65.031 OATh OF INQUEST JURORS

Section 12.65.041 SUBPOENA AND EXAMINATION OF WITNESSES

Section 12.65.051 VERDICT OF INQUEST JURY

Section 3 AS 18.50.230

a.

Section 4 AS 18.50.230

(c)

Section 5 AS 18.50.230

(d) Should a coroner's inquest be furnished evidence to determine "presumptive deaths" or should the medical examiner have the power to do so without an inquest?

Section 6 AS 18.50.240 (a)

Section 7 AS 18.50.240 (c)

Section 8 18.50.240 (d)

Section 9 AS 18.50.250 (a)

Section 10 AS 18.50.250 (b)

Section 11 AS.22.15.110 ADDITIONAL DUTIES OF DISTRICT JUDGES AND MAGISTRATE

(1)

(2) See Section 18.52.090 COMMENT ON (b) Isn't this our current policy?

Section 22.15.310 APPOINTMENT

Section 13 AS 22.15.320 ADMIMINISTRATION OF DECEDENT"S ESTATES

Section 14 AS 22.15.340 COMPENSATION

Section 15 AS 22.15.350 OTHER DUTIES

Section 16 AS 13.15.065 (a)

Section 16 AS 39.25.110

(16) If the Medical Examiner is an "exempt" employee, is he responsible to the Governor's office or the Department of Public Safety?

Section 17 INTERIM OPERATION OF ALASKA MEDICAL EXAMINER COMMISSION

(a)

(1)

(2)

(3)

(4)

(b)

(1)

(2)

(3)

There were approximately 450 Court Ordered autopsies last year. I have no idea as to what this actually cost the State of Alaska; however, as this bill is written I forsee a substantial increase in laboratory costs alone. If Police Departments are no longer responsible to seize evidence for transmittal to Forensic laboratories (such as, the F.B.I.) who will pay for these services which were formerly provided at no cost? Can a small community, such as Palmer, Soldotna, Kenai and others, afford to pay for these services. Is it necessary to have a "full time" Medical Examiner, or would a "part time" examiner be more effective so long as training is provided for the assistants and associates? Should the

Medical examiner have the authority to direct investigators regarding collection of evidence at a crime scene? Who is responsible for collecting and transporting perishable evidence from the scene? Is the Medical Examiner to write a letter of transmittal to the appropriate laboratory requesting examination? Will the medical examiner be responsible for the retention of and "chain of custody" of evidence? If this bill is passed, will local law enforcement agencies be responsible to the Department of Public Safety for death investigations? Can the Department of Public Safety, through the Medical Examiner, investigate all deaths or will local jurisdictions still be responsible for investigation of violent deaths which occur within their jurisdictions? Isn't it the duty of the Medical Examiner to assist law enforcement in determining the "Cause of Death" and the investigating agency to gather facts to determine the "manner of death"? Can this bill be abused by allowing the medical examiner to send evidence to the private laboratory of his choice?

Alaska Court System

State of Alaska

303 K STREET
ANCHORAGE, ALASKA 99501

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 14, 1978

Steve Mizera
Administrative Assistant To The
Honorable Joseph L. Orsini
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Steve:

As we discussed on the phone last week I am submitting information to your office concerning the fiscal impact of HB 392/SB 285- Medical Examiner bill. Specifically, you have requested more detailed information concerning the cost and number of autopsies and lab fees incurred by the Court System.

For fiscal year 1978, the Court System is budgeted approximately $198,000 for autopsy expenses. This includes contractional payments to doctors for actual autopsy work and testifing at inquests, payments for lab fees required for determination of cause of death, payments to mortuaries or hospitals for use of facilities for conducting autopsies, air freight for shipping bodies from the bush into the metropolitan areas for autopsy. In Anchorage, the current charge for an autopsy is $240.00, including lab fees. In addition, the local mortuaries charge a $50.00 facility usage fee. Anchorage autopsies, therefore, average approximately $300.00 per case. In Fairbanks, the cost is somewhat higher, with physican fees averaging approximately $300.00 per case plus $60.00 to $100.00 in lab fees. Bush cases generally cost the same as Anchorage cases, with the exception of $100.00 to $200.00 transportation and livery charges. There are approximately 300 autopsies performed on Anchorage coroner cases each year, and another 200 to 300 cases originating in Fairbanks, bush locations, or southeast Alaska. The average cost would therefore be between $330.00 and $390.00, all costs included.

For FY 79, the Court System has requested $228,000 for autopsy expenses. This is based upon a projected 15 per cent increase in cost for professional fees.

I have reviewed the fiscal note prepared by the Department of

Public Saftey, revised April 25, 1977. This fiscal note appears to still be fairly accurate, at least to the extent that the costs can be predicted at this time. I would like to call your attention to the last page of this fiscal note in which Public Saftey lists several comments concerning the fiscal note. In these comments it is stated that the Court System has a budget $225,000 for autopsies state-wide. This amount should be $228,000 for fiscal year 1979. Public Saftey estimates that the establishment of the Medical Examiner office will reduce the need for funds currently expended by the Court System by $45,000. This is a fairly safe estimate of the amount of the direct physican fees which would be eliminated by having a Medical Examiner to personally perform a large number of the Anchorage autopsies.

The final paragraph of Public Safety comments concerning the bill states that the balance of the Court System's current appropriation (for FY 79 this would be $228,000 minus $45,000) will be required for maintaining autopsy costs beyond the direct physican work which the Medical Examiner himself will conduct. In otherwords, approximately $183,000 will still be appropriated, either to the Court System or to Public Safety, to cover the cost of autopsies outside of Anchorage, autopsies within Anchorage which are performed by private physicans, all lab fees, all transportation costs, and all facility costs pertaining to autopsies.

In summary, Public Safety has stated that a full year's operation of the Medical Examiner's office will cost approximately $212,000. Of this amount available through savings in previously appropriated funds for autopsies. However, the remainder of $183,000 in the Court System budget would still be required for the payments listed above.

I hope that this letter has somewhat clarified the situation surrounding the payments for autopsies. If not, or if you have other questions concerning autopsy costs or the Medical Examiner bill, please let me know as soon as possible. As you are aware, the Court System is urging that action be taken on SB 285 during the current session.

Sincerely,

Richard P. Barrier
Deputy Administrative Director

c: Arthur H. Snowden, II
Administrative Director

Trygve R. Hermann
Director of Administrative Services
Public Safety

Daniel W. Hickey
Chief Prosecutor

Robert F. Scroeder
Fiscal Analyst

RPB/ch

COMMENTS CONCERNING THE FISCAL NOTE FOR HB392/SB 285

ATTACHED IS A COST COMPARISON COMPILED BY MYSELF WITH ASSISTANCE FROM OTHER PARTIES AND AGENCIES FAMILIAR WITH ALL OR PART OF THE DEATH INVESTIGATION SYSTEM IN ALASKA. THESE ARE NOT INFLATED FIGURES. IF ANYTHING THEY ARE TOO CONSERVATIVE.

WHAT I HAVE ATTEMPTED TO DO IS PREPARE A REALISTIC COMPARISON OF THE COST OF RUNNING THE PRESENT SYSTEM AS OPPOSED TO THE COST OF THE PROPOSED NEW SYSTEM.

THE ALASKA COURT SYSTEM WHICH MANAGES THE CURRENT SYSTEM SAYS THAT IT BUDGETS $225,000 FOR PERFORMING AUTOPSIES.

ADDING TOGETHER THE $180,000 PER YEAR THAT THE COURT SYSTEM PLANS TO KEEP FOR "ONGOING PROGRAMS", $616,660 TO ESTABLISH A LABORATORY AND AUTOPSY FACILITY, THE COST OF ESTABLISHING ASSISTANT MEDICAL EXAMINER OFFICES STATEWIDE, ADMINISTRATIVE COSTS, PURCHASING NEW EQUIPMENT, SERVICING OLD EQUIPMENT, AND ALLOWING FOR INFLATION AND UNKNOWN COSTS WILL EASILY BRING THE COST OF IMPLEMENTING THIS BILL TO IN EXCESS OF ONE MILLION DOLLARS PER YEAR.

A MILLION DOLLARS PER YEAR IS A FAR CRY FROM THE PREDICTIONS IN THE FISCAL NOTE OR THE CURRENT COST OF RUNNING OUR PRESENT SYSTEM.

RESPECTFULLY SUBMITTED,

LEE MOEGLEIN
EVERGREEN MEMORIAL CHAPEL, INC.
737 E ST.
ANCHORAGE, AK. 99501 279-5477

3-17-82

PRESENT COST PER YEAR FOR DELIVERY SYSTEM, AUTOPSY FACILITY, AND AUTOPSY PERFORMANCE (INCLUDING LABORATORY TOXICOLOGY AND HISTOLOGY SERVICES) **

DELIVERY TO AUTOPSY FACILITY (600 TRIPS @ $20)	$12,000.00
DELIVERY TO AIRPORT (300 TRIPS @ $20)	6,000.00
FACILITY FEE (INCLUDING ASSISTANCE, EQUIPMENT, INSTRUMENTS, AND CLEAN UP)(600 @ $50)	30,000.00
PATHOLOGY SERVICES (INCLUDES ANATOMICAL EXAMINATION TOXICOLOGY AND HISTOLOGY SERVICES)	144,000.00
LEGAL TESTIMONY AND CONSULTING	7,500.00
TOTAL COST	$199,500.00

** DELIVERY AND FACILITY COSTS BASED ON OUR EXPERIENCE WITH PROVIDING THEM. ANATOMICAL PATHOLOGY, TOXICOLOGY, HISTOLOGY, TESTIMONY AND CONSULTING FEES BASED ON FIGURES FROM DR. MICHAEL T. PROPST, M.D., FORENSIC PATHOLOGIST. TOTAL CASE VOLUME ESTIMATES FROM MRS. DOLORES WILKS, CORONER/PUBLIC ADMINISTRATOR--ANCHORAGE.

PROJECTED COST PER YEAR FOR THE DEPARTMENT OF PUBLIC SAFETY TO SET UP ITS OWN LABORATORY AND DO ITS OWN TOXICOLOGY, HISTOLOGY, AND DELIVERY.

DELIVERY SYSTEM

TWO MEN PER SHIFT, THREE SHIFTS PER DAY, SEVEN DAYS PER WEEK, 365 DAYS PER YEAR. INCLUDING OVERTIME AND FRINGE BENEFITS. TWO VEHICLES WITH MINIMUM EQUIPMENT, GAS, OIL, INSURANCE, MAINTENANCE COSTS. (A)	$200,000.00

PERSONNEL

CHIEF MEDICAL EXAMINER	65,000.00
ASSOCIATE MEDICAL EXAMINER	55,000.00
TWO MEDICAL RECORDS ASSISTANTS	35,400.00
SECRETARY-RECEPTIONIST	15,000.00
DIENER (AUTOPSY ASSISTANCE-DAYTIME HOURS)	15,000.00
MEDICAL TECHNOLOGIST OR CHEMIST WITH DEGREE & EXPERIENCE	25,000.00
HISTOLOGY TECHNOLOGIST	20,000.00
PERSONNEL FRINGE BENEFITS (20%)	46,080.00

TRAVEL

COMMISSION	5,000.00
MEDICAL EXAMINER	6,000.00
ASSOCIATE AND ASSISTANT MEDICAL EXAMINER	15,000.00

FACILITY

LEASE- 3,000 SQ. FT.	54,000.00
TELEPHONE	3,600.00
ELECTRICITY AND REFUSE (COMMERCIAL RATE)	1,980.00

OTHER

CHIEF MEDICAL EXAMINER AUTO		3,000.00
ASSOCIATE MEDICAL EXAMINER AUTO		3,000.00
GAS AND OIL		2,400.00
OFFICE SUPPLIES		1,200.00
PRINTING		10,000.00
REAGENTS AND EXPENDABLES	(TOXICOLOGY)	25,000.00
	(HISTOLOGY)	10,000.00
TOTAL*		$616,660.00

*COMMENT- THESE FIGURES DO NOT INCLUDE THE COST OF SETTING UP ASSISTANT MEDICAL EXAMINERS OFFICES THROUGHOUT THE STATE. THEY DO NOT INCLUDE INFLATION, THE EQUIPMENT NECESSARY TO SET UP A LABORATORY OR AUTOPSY FACILITY, (SUCH AS PHOTOGRAPHIC MICROSCOPES, X-RAY FACILITIES, FLUROSCOPY, INSTRUMENTS, TWO WAY RADIO, DICTATION EQUIPMENT, TWO WAY RADIO, TABLES, SHIPPING CONTAINERS FOR TRANSPORTING REMAINS, OR THE REPLACEMENT OR SERVICE COSTS ON THESE ITEMS. ALSO, WE DID NOT INCLUDE STATE ADMINISTRATIVE COSTS WHICH COULD EASILY RUN AS HIGH AS 15% OF THE COST OF THE ENTIRE OPERATION. WE ALSO DID NOT INCLUDE THE $180,000 THE COURT SYSTEM PLANS TO KEEP FOR "ONGOING PROGRAMS IN STATEWIDE LOCATIONS".

(A) A STUDY CONDUCTED SEVERAL YEARS AGO BY DR. DONALD ROGERS, M.D. INDICATED IT WOULD COST UPWARDS OF $250,000 PER YEAR FOR THIS SERVICE.

PROJECTED COST PER YEAR FOR DELIVERY SYSTEM, AUTOPSY FACILITY, AND AUTOPSY PERFORMANCE (INCLUDING TOXICOLOGY AND HISTOLOGY) WHEN THESE SERVICES ARE CONTRACTED OUT UNDER HB 392 **

DELIVERY TO FACILITY ONE WAY (600 TRIPS @ $120)	$72,000.00
DELIVERY OF CASES TO MORTUARIES FOR RETURN TO LOCALITY OF DEATH AFTER EMBALMING (300 TRIPS @ $120)	36,000.00
TRANSFER OF REMAINS TO AIRPORT FROM MORTUARY (300 @ $120)	36,000.00
RETURN OF 300 SHIPPING CASES TO AIRPORT (BY DOUBLING UP, 150 TRIPS INSTEAD OF 300 @ $120)	18,000.00
ROUTINE TOXICOLOGY (600 CASES @ $79 PER CASE)	47,400.00
ADDITIONAL TOXICOLOGY(600 @ AVERAGE $10 PER CASE)	6,000.00
HISTOLOGY SERVICE (PREPARE SLIDES) (600 @ $15)	9,000.00
CHIEF MEDICAL EXAMINER (300 AUTOPSIES)	65,000.00
CONTRACT PROFESSIONAL SERVICES (300 AUTOPSIES @ $200)	60,000.00
MEDICAL RECORDS ASSISTANTS (2 @ $17,700.00)	35,400.00
MORGUE ATTENDANT (DIENER-24 HR. COVERAGE)	20,000.00
STATE FRINGE BENEFITS FOR PERSONNEL (20%)	36,080.00
COMMISSION TRAVEL	5,000.00
MEDICAL EXAMINER TRAVEL	6,000.00
ASSOCIATE AND ASSISTANT MEDICAL EXAMINER TRAVEL	15,000.00
3,000 SQ. FT. AUTOPSY FACILITY	54,000.00
PRINTING COSTS	10,000.00
TELEPHONE	3,600.00
OFFICE SUPPLIES	1,200.00
AUTOMOBILE LEASE	3,000.00
GAS, OIL, ETC.	1,200.00
MAG CARD 11 TYP(TYPEWRITER WITH A MEMORY)	3,600.00
TOTAL COST*	$543,480.00

** THESE FIGURES DO NOT INCLUDE THE COST OF SETTING UP ASSISTA NT MEDICAL EXAMINER OFFICES THROUGHOUT THE STATE. WE HAVE NO WAY OF EVEN ESTIMATING HOW MUCH THAT MIGHT COST. WE ALSO HAVE NOT INCLUDED THE COST OF EQUIPMENT SUCH AS REGULAR TYPEWRITERS, PHOTOGRAPHIC MICROSCOPES, X-RAY, FLUROSCOPY, INSTRUMENTS, TWO WAY RADIO, DICTATION EQUIPMENT, TABLES, SHIPPING CASES FOR HUMAN REMAINS, OR THE REPLACMENT COST OR SERVICE COSTS OF THESE ITEMS. ALSO, WE DID NOT INCLUDE STATE ADMINISTRATIVE COSTS FOR BOOKEEPING, ACCOUTING, LEGAL FEES, ETC. WHICH COULD RUN AS MUCH AS 15% OF THE ENTIRE COST OF THE OPERATION. WE ALSO DID NOT INCLUDE THE $180,000.00 THE COURT SYSTEM PLANS TO KEEP FOR "ONGOING PROGRAMS IN STATEWIDE LOCATIONS".

COST FIGURES COURTESY OF OUR OWN UNDERSTANDING OF THE DELIVERY SYSTEM, LOOMIS SECURITY ESTIMATES, MUNICIPALITY OF ANCHORAGE ESTIMATES, DR. MICHAEL T. PROPST, M.D., VOLUME FIGURES COURTESY OF THE ALASKA COURT SYSTEM. OTHER ITEMS FROM THE FISCAL NOTE. SOME ITEMS FROM THE FISCAL NOTE NOT INCLUDED BECAUSE THEY ARE FRILLS OR EXTRAVAGENT AND UNNECESSARY.

IN ADDITION TO OUR DESIRE TO SEE THIS BILL DEFEATED, THERE ARE A FEW SUGGESTIONS WHICH MIGHT BE IN ORDER TO IMPROVE THE CURRENT SYSTEM.

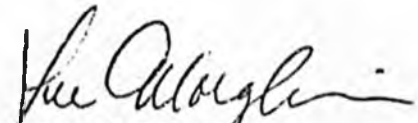
A. THE ALASKA COURT SYSTEM CURRENTLY SETS NO STANDARDS FOR THE FACILITIES OR EQUIPMENT USED IN PERFORMING THESE AUTOPSIES. STANDARDS SUCH AS SIZE OF FACILITY, TYPE OF CONSTRUCTION, LIGHTING REQUIREMENTS, VENTILATION, KINDS OF EQUIPMENT, ETC. IF THERE IS A PROBLEM IN REGARD TO THE ADEQUECY OF FACILITIES, IT COULD EASILY BE RECTIFIED.

B. REQUEST THAT THE CURRENT CORONERS BE ALLOWED TO RUN THEIR OFFICES WITHOUT CONSTANT INTERFERENCE FROM COURT SYSTEM ADMINISTRATORS.

C. PROVIDE THE CORONERS WITH ADEQUATE FUNDING TO DO THEIR JOB.

THANK YOU FOR YOUR ATTENTION.

RESPECTFULLY,



LEE MOEGLEIN

Nizera

MEMO RE:

SB 285
HB 392

(January 27, 1978)

Criminal Justice Planning Department questioned whether a commission was needed. They will soon provide information as to how the office of medical examiner is handled in other states. This bill provides that there will be established in the Department of Public Safety the office of state medical examiner.

Sec 18.52.020 established the Commission.

There appears to be an oversight in Sec. 18.52.050 which reads:

"DEATHS REQUIRING DETERMINATION AND CERTIFICATION OF CAUSE AND MANNER. (a) The office of the state medical examiner shall determine and certify the cause and manner of any human death that affects the health and safety of the public and which

(1) is apparently homicidal, suicidal, accidental..."

Would this require the medical examiner to determine the cause of every traffic accident?

Also, an oversight may exists where this section continues:

" (2) occurs when the deceased was unattended by a physician during the 24 hours immediately preceding his death;"

As most deaths are in this category, would this make the duties of the medical examiner too broad?

Again, at Sec 18.52.060, which reads: "NOTIFICATION OF DEATH REQUIRED. (a) Any person having knowledge of a death requiring investigation under this chapter shall immediately notify either a medical examiner or a state or local law enforcement agency of the fact and location of death."

Shouldn't "person" be changed?

Conceivably everyone knowing of a death is required to call.

Sec. 18.52.085 authorizes a medical examiner to enter rooms or dwellings but unless it incorporates the words: "with permission" there are obvious problems with the current statutes on search and seizure.

This same section (b) permits the examiner to apply to a judge for an order, but the examiner need "not if exigent circumstances exist." "Exigent circumstances should be clearly defined.

INTRODUCED:

REFERRED:

IN THE HOUSE BY COMMITTEE

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 392

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act Entitled: "An Act relating to inquiries into deaths, the public administration of the estates of deceased persons, and outlining additional duties, responsibilities, authority and functions of coroners and their designees or employees; and providing for effective date."

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

*Section 1. AS 22.15.110 (1) is amended as follows:

Sec. 22.15.110. ADDITIONAL DUTIES OF DISTRICT JUDGE AND MAGISTRATE. Each district judge and magistrate shall

(1) perform the duties and exercise the authority of coroner as prescribed by (law) AS 12.65.020-110 and by §§ 360-420 of this chapter.

*Section 2. AS 22.15.350 is amended as follows:

Sec. 22.15.350. DUTIES AS CORONER. In addition to his other duties, a public administrator or coroner shall perform the duties set out in AS 12.65.020-110, §110 of this chapter and as specified in §§360-420 of this chapter

Section 3. AS 22.15 is amended by adding §§ 360-420 as follows:

Sec. 22.15.360. PUBLIC ADMINISTRATORS, CORONERS TO BE MAGISTRATES.

Each person appointed under §310 of this chapter, if not previously sworn in as a magistrate of the district court in the jurisdiction in which he is sitting, shall be given the oath of office pertaining to magistrates upon such appointment. Thereafter such person shall be a judicial officer as devined in AS 22.20.010 and shall be empowered with the functions as set forth in AS 22.20.030.

Sec. 22.15.365. EMPLOYEES, POWERS. A coroner shall have authority to employ up to three persons as judicial employees in accord with AS 22.20.037 and who shall be able to exercise the functions set forth in AS 22.20.035, as assistants to the coroner, and act in his stead when so designated by the coroner, to be on call on a 24-hour basis in the coroner's discretion.

Sec. 22.15.370. EXAMINATION OF BODY AT PLACE OF DEATH: REMOVAL OR RELEASE: KEEPING BODY IN POSITION OR PLACE OF DEATH FOR PURPOSES OF INQUIRY. In addition to the coroner's functions as set forth in AS 12.65.020 - 110, the coroner or one of his assistants as designee, on being informed of a death and finding it to fall into the classification of deaths requiring his inquiry, may immediately proceed to where the body lies, examine the body, make identification, make inquiry into the circumstances, manner, and means of death, and, as circumstances warrant, either order its removal for further investigation or disposition, or release the body to the next of kin for further disposition. For purposes of inquiry, the body of one who is known to be dead under any of the circumstances enumerated in AS 12.65.020 shall not be distrubed or moved from the position or

place of death without permission of the coroner or his designee.

Sec. 22.15.375. AUTHORITY TO TAKE CHARGE OF PERSONAL EFFECTS, ETC. OF DECEASED AT SCENE OF DEATH; RELATED MATTERS OF SEALING PREMISES: COSTS; DELIVERY OF PROPERTY OR EVIDENCE TO A LAW ENFORCEMENT AGENCY OR DISTRICT ATTORNEY; PROHIBITION AGAINST REMOVAL OF ANY ITEM OR AGAINST ANY DISTRUBANCE OF THE SCENE PRIOR TO ARRIVAL OF CORONER; ALTERNATIVE DESIGNATION OF PEACE OFFICER TO ACT IN CORONER'S BEHALF. In any death into which the coroner is to inquire, he may take charge of any and all personal effects, valuables, and property of the deceased at the scene of death and hold or safeguard them until lawful disposition thereof can be made otherwise. He may, in his discretion, lock the premises and apply a seal to the door or doors prohibiting entrance to the premises, pending arrival of a legally authorized representative of the deceased; provided that this shall not be done in such a manner as to interfere with any investigation subsequently to be made by a law enforcement agency. Any costs arising from the premises being locked or sealed while occupied by property of the deceased may be a proper and legal charge against the estate of the deceased.

Any such property or evidence related to the investigation or prosecution of any known or suspected criminal death may be delivered to a law enforcement agency or district attorney, receipt for which shall be acknowledged, but only with full and complete knowledge by and express permission or approval of, the coroner or his designee. Such items may include, but not be limited to,

photographs taken by the coroner or his designee which may be helpful in a coroner's inquest or to the office of the district attorney in its prosecutorial function.

Alternatively, the coroner or his designee may direct any law enforcement officer called to the scene to preserve such property or evidence and deliver same to his office or that of the district attorney and may direct that duplicates of evidentiary photographs of the secne be made available to the coroner's office and the district attorney's office at the same time. In his discretion, the coroner or his designee may arrange for a peach officer to carry out any of the functions outlined herein as an aid to the coroner's office.

It shall be unlawful for any person to search for, or remove, any papers, moneys, valuable property or weapons constituting the estate of the deceased from the person of the deceased or from the premises, prior to the arrival of the coroner or his designee or without his permission. At the scene of any death, when it is immediately apparent or when it has not been previously recognized and the coroner's examination reveals that police investigation or criminal prosecution may ensue, the coroner or his designee shall not further wilfully disturb the body or any related evidence until the law enforcement agency has had reasonable opportunity to respon to the scene, if their purposes so require and they so request.

Sec. 22.15.380. CORONER's AUTHORITY TO TAKE POSSESSION OB BODY; EXHUMATION, POST MORTEM EXAMINATION OR AUTOPSY; RECORDS OF

MEDICAL FINDINGS; RETENTION OF BODY TISSUES; RIGHT TO ATTEND AUTOPSY. For purposes of inquiry the coroner or his designee may, in his discretion, take possession of the body, which shall include the authority to have such body exhumed, order it removed from the scene of death or after exhumation to a convenient place, and make or cause to be made a post mortem examination or autopsy thereon, and make or cause to be made an analysis of the stomach, stomach contents, blood, organs, fluids, or tissues of the body.

The coroner or his designee may rely on any licensed physician or pathologist of his choosing to make such examinations, provided said physician or pathologist is licensed in this State to practice medicine, or upon any criminal laboratory or its employees contracting with the Alaska Court System to make such laboratory examinations, in executing the coroner's functions as described in this section.

The detailed medical findings resulting from an inspection of the body or autopsy by an examining physician shall be reduced to writing and shall include all positive and negative findings pertinent to establishing the cause of death in accordance with medicolegal practice and this, along with the written opinions and conclusions of the examining physician, shall be included in the coroner's record of the death. He shall have the right to retain only such tissues of the body removed at the time of the autopsy as may, in his opinion, be necessary or advisable to the inquiry into the case, or for the verification of his findings.

No person may be present during the performance of an autopsy

without the express consent of the coroner or his designee.

Sec. 22.15.385. RIGHT TO RETAIN BODILY TISSUES. The coroner shall have the right to retain tissues of the body removed at the time of autopsy as may, in his opinion, be necessary or advisable for scientific investigation. In his discretion, the cororer may retain constructive custody of such tissues while directing that they be physically retained by the examinign physician, in such physician's laboratory, in any laboratory contracting with the Alaska Court System for the study and examination of such tissues, in any designated morgue attached to such laboratory or attached to any funeral home premises.

Sec. 22.15.390. CERTIFICATE OF DEATH: CAUSE OF DEATH: ISSUANCE OF CERTIFICATE WITHOUT HOLDING INQUEST OR AUTOPSY: EFFECT OF LACE OF EVIDENCE. The cause of death appearing on a certificate of death signed by the coroner shall be in conformity with facts ascertained from inquiry, autopsy and other scientific findings. In case of death without medical attendance and without violence, casualty, criminal or undue means, the coroner may, without holding an inquest or autopsy, make the certificate of death from statements or relatives, persons last in attendance, or persons present at the time of death, after due medical consultation and opinion has been given by one qualified and licensed to practice medicine and so recorded in the records of the death, providing such information affords clear grounds to establish the correct medical cause of death within accepted medical practice and within the requirements of the Division of Vital Statistics

of the Department of Health, Education, and Social Services of this State. The coroner shall not finally exclude crime, suicide, or accident as a cause of death because of lack of evidence.

Sec. 22.15.395. NOTES, LETTERS WRITTEN BY DECEASED, DISPOSITION THEREOF. Whenever the death of any person shall have been referred to the coroner for investigation, there shall be delivered to the coroner any note, letter or other document apparently written by the deceased which may tend to indicate an intention by the writer to take his life, including directions for disposition of his property or disposal of his remains. A facsimile copy thereof shall be placed in the coroner's records, and, if an inquest be held, a true copy shall be read into the record and transcribed into the notes of the proceedings. Upon completion of legal proceedings arising from such death, the original instrument shall be delivered by the coroner or his designee to the addressee or to the legal representative of the estate of the decedent; provided, however, that if the instrument purports to be testamentary in nature, it may be filed with the special master appointed in that judicial district to hear probate matters.

Sec. 22.15.400. CORONER's INQUEST. The coroner or his designee, in his discretion and if the circumstances so warrant, hold an inquest in any case of death in accord with the provisions of AS 12.65.020 and will seriously consider holding an inquest in any case where a request to do so is made by the attorney general, the district attorney, the foreman of the grand jury, any law enforcement agency, any hospital or by a physician in attendance at the time of death or by a physician in attendance at the time of death or by a physician who had treated

the decedent. If the coroner or his designee decides not to hold an inquest as requested, he shall state the reasons therefore in writing which shall become a part of the record in such case.

The decision by the coroner or his designee to hold an inquest, or to order an autopsy at the time of death of decedent, is discretionary and no one may intervene or order that it not be held without a full hearing in open court before the coroner citing adequate reasons therefor.

Sec. 22.15.405. LIMITATIONS AND PROHIBITIONS IN AUTOPSIES. The written authorization for any autopsy in a proper coroner's case may permit the person performing the autopsy to remove any structure or organ from the remains of decedent for examination into the cause of death, but not for other purposes, unless permission is obtained from next of kin or is in the decedent's will, note or letter written with specific directions for such other purposes. Without such permission or direction, the person performing the autopsy may not exceed the directions contained in the order of the coroner or his designee.

Sec. 22.15.410. REPEALING PRIOR ACT AS 12.65.010

Sec. 22.15.415. EMBALMING. No embalmer shall embalm a dead human body when he has information reasonably indicating crime in connection with the death until permission of the coroner or his designee has been obtained. No embalmer shall embalm a dead human body of any person who has died from an unknown cause, except with the permission of the coroner or his designee.

Sec. 22.15.420. EFFECTIVE DATE JULY 1, 1978.

County Coroner System - (19) States including Washington

County Medical Examiner - (5) States

Combination County Coroner + Medical Examiner - (13) States including Alaska + California

State Medical Examiner - (11) States

DEATH INVESTIGATION:

AN ANALYSIS OF LAWS AND POLICIES OF THE UNITED STATES, EACH STATE AND JURISDICTION

[As of January 31, 1977]

The research herein was performed by the Sheehan, Phinney, Bass & Green Prof. Ass'n., Manchester, New Hampshire pursuant to contract 240-76-0021 with the Bureau of Community Health Services, Health Services Administration, Department of Health, Education, and Welfare. The opinions expressed herein are those of the authors and should not be construed as representing the opinions or policies of any agency of the United States Government.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service
Health Services Administration
Bureau of Community Health Services
5600 Fishers Lane, Rockville, Maryland 20857

DHEW Publication No. (HSA) 78-5252

1978

ALASKA

Alaska's death investigation system consists of coroners and medical examiners. District judges and magistrates are required to serve as ex officio coroners and perform the duties and exercise the authority of that office. When authorized by the supreme court, the judge in each judicial district is required to appoint a person to act as public administrator of the estates of deceased persons and as coroner.

The commissioner of health and social services is authorized to appoint for a term of one year or less as many medical examiners in each of the judicial districts as, in his opinion, the administration of justice requires. Each medical examiner is required to be a physician licensed to practice in Alaska or a physician employed by the State, or an agency of the United States Government within the State if licensed in a State other than Alaska.

When a person dies unattended by a physician or when no physician is prepared to execute a certificate of death, the district judge or magistrate assigned to serve the place where the death occurs may by written order direct a medical examiner to view the dead body and to perform an examination, including an autopsy, as is, in the opinion of the medical examiner, necessary to make a proper determination of the cause of death and to execute the prescribed death certificate. Upon completing his examination, the medical examiner is required without delay to submit a report of his findings and conclusions to the district judge or magistrate. The judge or magistrate is required to order an inquest if the findings and conclusions of the medical examiner, together with the other information available to the judge or magistrate, so warrant. In holding an inquest, the district judge or magistrate may subpoena and examine an appointed medical examiner when available, or otherwise a physician, who is required to examine the body and give a professional opinion as to the cause of death. If the findings and conclusions of the medical examiner together with other information available to the judge or magistrate do not warrant an inquest, the district judge or magistrate is required to enter an order dispensing with the inquest and to record the certificate of death as prescribed by law.

When a coroner is informed that a person has been killed by another or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by criminal means or he has committed suicide, the coroner is required to go to the place where the dead person is, or, in the alternative, arrange for a peace officer to do so and report his findings to the coroner, on the basis of which the coroner may proceed with an inquest if an inquest is warranted.

The inspection, disclosure, and copying of vital statistics records may occur only when the custodian is satisfied that the applicant has a direct interest in the matter and that the information is necessary for the determination of personal and property rights.

Reports of findings and conclusions are submitted to the district judge or magistrate having jurisdiction. No further statutory indication exists relative to the accessibility of such reports to next of kin.

Alaska has no statutory provision relating specifically to the investigation of sudden and unexplained infant deaths.

Citations: Alaska Stat. §§ 12.65.010, 12.65.020, 12.65.030, 12.65.040, 12.65.070; §§ 22.15.110, 22.15.310, 22.15.350; §§ 18.50.310, 18.50.320; §§ 09.25.110, 09.25.120; Alaska Admin. Code § 05.925.

ARIZONA

Arizona has a county medical examiner death investigation system, with the power of appointment in the board of supervisors of each county. Each county medical examiner is required to be a licensed physician in good standing certified in pathology and skilled in forensic pathology. If the board of supervisors of any county determines that the appointment of a medical examiner is not practical, the board of supervisors is required to establish a list of licensed physicians who have agreed to perform the duties required of a county medical examiner on a contract basis. Licensed physicians on such list are not required to be either residents of the county, certified in pathology or skilled in forensic pathology. The county medical examiners are responsbile for the medical examination or autopsy of a human body when death occurs and the deceased is not under the current care of a physician for a potentially fatal illness or when an attending physician is unavailable to sign the death certificate; or when death results from violence; or when death occurs suddenly when in apparent good health, or in prison, or in a suspicious, unusual, or unnatural manner, or during anesthetic or surgical procedures; or when death from disease

authority granted by him subject to any rules and regulations prescribed by the State Medical Examiner Commission.

A county coroner is elected by the qualified electors of each county for a term of two years and is commissioned by the Governor. Each coroner may at his discretion appoint deputy coroners.

The State Medical Examiner is authorized to investigate the death of any person from violence, whether apparently homicidal, suicidal, accidental, or industrial, including but not limited to death due to thermal, chemical, electrical or radiation injury and death due to criminal abortion, whether apparently self-induced or not, or suddenly when in apparent good health, or in a prison, jail or penal farm, or in any suspicious or unusual or unnatural manner. When the State Medical Examiner is informed that a death has occurred in any such manner or under any such circumstances, he is authorized to make such examinations, investigations and autopsies as he deems necessary or as may be requested by the Prosecuting Attorney, the Circuit Court, the Sheriff of the County in which death occurs, the Chief of Police of a City in which death occurs, or the Commission of the Arkansas Department of Correction at the time of death. The State Medical Examiner is not required to make such examination, investigation, or autopsy at the request of any private citizen or any public official other than those enumerated above.

Each county coroner is required to investigate the cause of death when death occurs without medical attendance or when the dead body of any person is found and the circumstances of his death are unknown or indicate that he has been foully dealt with. Upon receiving any information that such a death has occurred, the coroner is required to hold an inquest to inquire into the cause, manner and circumstances of the death. The coroner is required to deliver every inquisition, with all the examinations, depositions, and recognizances concerning the case to the clerk of the Circuit Court of his county, who is required to immediately lay the same before the Prosecuting Attorney, prosecuting in and for the county.

The State Medical Examiner or his assistants are required to promptly make and file with the Prosecuting Attorney of the county in which the death occurs a full report of his findings and the facts developed by an autopsy. The State Medical Examiner or his assistants or deputy, is required to make a certificate of death.

All records, files and information kept, retained or obtained by the State Medical Examiner in his examinations, investigations and autopsies are confidential and privileged unless released by a court of competent jurisdiction, the Prosecuting Attorney having criminal jurisdiction over the case, or by the State Medical Examiner, to persons with legal or scientific interests.

The State Registrar is required to permit the inspection of a death record, or issue certified copies from a death record or part of a death record, only when he is satisfied that the applicant has a direct and tangible interest in the content of the death record and that the information contained in the death record is necessary for the determination or protection of a personal or property right.

Arkansas has no statutory provision relating specifically to the investigation of sudden and unexplained infant deaths.

Citations: Const., Art. VII, §§ 46, 48; Ark. Stat. Ann. §§ 12-201, 12-901; §§ 42-611, 42-612, 42-613, 42-615, 42-616, 42-621, 42-622, 42-301, 42-302, 42-325; § 82-520.

CALIFORNIA

California's death investigation system consists of county coroners and medical examiners.

A coroner is required to be elected by the people of each county. The board of supervisors in any county may, by ordinance, abolish the office of coroner and provide instead for the office of medical examiner, to be appointed by the board and to exercise the powers and perform the duties of the coroner. Each medical examiner is required to be a licensed physician and surgeon duly qualified as a specialist in pathology.

Coroners and medical examiners are required to inquire into and determine the circumstances, manner, and cause of all violent, sudden or unusual deaths; unattended deaths; deaths in which the deceased has not been attended by a physician in the twenty days before death; deaths related to or following known or suspected self-induced or criminal abortion; known or suspected homicide, suicide, or accidental poisoning; deaths known or suspected as resulting in whole or in part from or related to accident or injury either old or recent; deaths

due to drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration or where the suspected cause of death is sudden infant death syndrome; death in whole or in part occasioned by criminal means; deaths associated with a known or alleged rape or crime against nature; deaths in prison or while under sentence; deaths known or suspected as due to contagious disease and constituting a public hazard; deaths from occupational disease or occupational hazards; deaths under such circumstances as to afford a reasonable ground to suspect that the death was caused by the criminal act of another, or any deaths reported by physicians or other persons having knowledge of death for inquiry by coroner.

Upon being informed that a death has occurred under any of the above described circumstances and finding that it falls into the classification of deaths requiring inquiry, the coroner or medical examiner, or his appointed deputy, may immediately proceed to where the body lies, examine the body, make identification, make inquiry into the circumstances, manner, and means of death, and, as circumstances warrant, order its removal for further investigation or disposition. The coroner or medical examiner has discretion to determine the extent of inquiry to be made into any death occurring under any of the above described circumstances. If in his inquiry he determines that the physician of record has sufficient knowledge to reasonably state the cause of death occurring under natural circumstances, the coroner or medical examiner may authorize that physician to sign the certificate of death.

At the scene of any death, when it is immediately apparent or when it has not been previously recognized and the coroner's examination reveals that police investigation or criminal prosecution may ensue, the coroner or medical examiner may not further willfully disturb the body or any related evidence until the law enforcement agency has had reasonable opportunity to respond to the scene, if their purposes so require and they so request. In all cases in which a person has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, the coroner or medical examiner is required to immediately upon receiving notification of the death to report it both by telephone and written report to the chief of police, or other head of the police department of the city or city and county in which the death occurred outside the incorporated limits of a city. When the suspected cause of death is sudden infant death syndrome, the coroner or medical examiner is required to, within 24 hours or as soon as is feasible, unless the infant's physician of record certifies sudden infant death syndrome as the cause of death and a parent objects to an autopsy, and, in all other cases, the coroner or medical examiner, may, in his discretion, take possession of the body, and make or cause to be made a post mortem examination or autopsy on the body.

In any case involving an infant under the age of one year where the gross autopsy results in a provisional diagnosis of sudden infant death syndrome, the coroner or medical examiner is required, within 24 hours of the gross autopsy, to notify the county health officer. The detailed findings resulting from an inspection of the body or autopsy by an examining physician is required to be either reduced to writing or permanently preserved on recording discs or other similar recording media, including all positive and negative findings pertinent to establishing the cause of death in accordance with medico-legal practice. These findings, along with the written opinions and conclusions of the examining physician, are required to be included in the coroner's record of the death.

In those cases in which a coroner or medical examiner is required to conduct an inquiry pursuant to law, he is required to personally sign the certificate of death. The cause of death appearing on such certificate must be in conformity with facts ascertained from inquiry, autopsy and other scientific findings. In case of death without medical attendance and without violence, casualty, criminal or undue means, the coroner or medical examiner may, without holding an inquest or autopsy, make the certificate of death from statements of relatives, persons last in attendance, or persons present at the time of death, after due medical consultation and opinion has been given by one qualified and licensed to practice medicine and so recorded in the records of death, providing such information affords clear grounds to establish the correct medical cause of death within accepted medical practice by the Division of Vital Statistics of the State Department of Public Health.

Each coroner or medical examiner may, in his discretion, if the circumstances warrant, hold an inquest. If requested to do so by the Attorney General, the district attorney, sheriff, city prosecutor, city attorney, or a chief of police of a city in the county in which such

coroner or medical examiner has jurisdiction, the coroner or medical examiner is required to hold an inquest. Each inquest is required to be open to the public and may be held with or without a jury at the coroner's or medical examiner's discretion.

The coroner or medical examiner may summon a surgeon or physician to inspect the body or hold a post mortem examination and give a professional opinion as to the cause of the death. After hearing the testimony, the jury is required to render its verdict and certify it by an inquisition in writing signed by the members of the jury, or the coroner or medical examiner is required to render his decision if the inquest is held without a jury, setting forth the name of the deceased, the time and place of death, the medical cause of death and whether the death was by natural causes, suicide, accident, or the hands of another person other than by accident. In addition to filing his findings with the county clerk, if the findings are that the deceased met his death at the hands of another, the coroner or medical examiner is required to transmit his written findings to the district attorney, the appropriate police agency, and any other police agency requesting copies.

Each coroner or medical examiner is required to keep an official register or file which includes: the name and any aliases of the deceased, when known; a narrative summary of the circumstances leading to and surrounding the death, together with names and addresses of any witnesses to such events; the cause of death, when known, with reference or direction to the detailed medical reports upon which decision as to cause of death has been based; and persons notified of the death, together with a notation of any unsuccessful attempts at notification.

Records of coroners and medical examiners are public records and are required to be open to inspection by any citizen at all times during office hours. Death certificates are required to be open for inspection by the public in accordance with rules and regulations adopted by the State department of health for local registrars.

Coroners and medical examiners are required to inquire into and determine the circumstances, manner, and cause of those deaths where the suspected cause of death is sudden infant death syndrome. The coroner or medical examiner, within 24 hours or as soon as is feasible, when the suspected cause of death is sudden infant death syndrome unless the infant's physician of record certifies sudden infant death syndrome as the cause of death and a parent objects to an autopsy, is required to take possession of the body, and to make or cause to be made a post mortem examination or autopsy of the body.

The detailed medical findings resulting from an inspection of the body or autopsy by an examining physician is required to be either reduced to writing or permanently preserved on recording discs or other similar recording media, including all positive and negative findings pertinent to establishing the cause of death in accordance with medico legal practice, and along with written opinions and conclusions of the examining physician, are required to be included in the coroner's record of death.

In those cases involving an infant under the age of one year where the gross autopsy results in a provisional diagnosis of sudden infant death syndrome, the coroner or medical examiner is required, within 24 hours of the gross autopsy, to notify the county health officer. Upon receiving such notification, the county health officer or his designated agent, after consultation with the infant's physician of record, is required to immediately contact the person or persons who had custody and control of the infant and explain to such persons the nature and causes of the syndrome to the extent that current knowledge permits.

The State Department of Health is required to keep each county health officer advised of the most current knowledge relating to the nature and causes of sudden infant death syndrome. Annually, on or before April 1 of each year, the State Department of Health is required to submit a report to the legislature specifying the number of autopsies and post mortem examinations performed pursuant to law during the prior year, where the suspected cause of death was sudden infant death syndrome.

Citations: Cal. Gov't Code §§ 6250, 6253, 7113; §§ 24300, 24304, 24306; §§ 24009, 24010; § 24001 (1975 Supp.); Art. 4, § 462; Cal. Admin. Code Tit. 17, §§ 901, 902; Ch. 10, Art. I, §§ 27460 to 27471; Cal. Health & Safety Code § 10250 § 10253; Cal. Vital Statistics Code, § 10066; Cal. Public Health Admin. Code, Art. 1, § 218.

COLORADO

Colorado has a county coroner death investigation system. A coroner is elected in each county for a term of four years. No person may hold the

and also sent one to the attorney for the Commonwealth of the county or city involved. Va. Code Ann. § 32-31.18. If in the opinion of the medical examiner or the chief medical examiner it is advisable and in the public interest that an autopsy be made, or if one is required by the attorney for the Commonwealth or by the judge of the circuit or corporation court, the chief medical examiner or designated pathologist or toxicologist shall perform an autopsy.[20] A full report shall be filed with the medical examiner and the chief medical examiner, and also with the attorney for the Commonwealth, if the latter requests a report, or the medical examiner or chief medical examiner think he should have a report. Va. Code Ann. § 32-31.19. Facilities and personnel are provided by the State Health Commissioner. Va. Code Ann. §§ 32-31.12, 32-31.15, 32-31.20.

ACCESSIBILITY: Death certificate - under regulations issued by the State Board of Health, the State Registrar or the county or city registrar is required, upon request, to disclose data or issue certified copies of death certificates or information when satisifed that the applicant for such record has a direct and tangible interest in the content of such record is necessary for the determination or protection of personal or property rights. Va. Code Ann. § 32-353.6, § 32-353.7, Regulations Governing Vital Statistics, # 11. Reports - Under Va. Code Ann. § 2.1-340, all official records, except as otherwise specifically provided by law, are required to be open to inspection and copying by any citizen of Virginia during the regular office hours of the custodian of such records. Although the applicability of such law to the records in the Office of the Chief Medical Examiner has not been officially construed, it has long been the policy of such office to make its official reports, including autopsy reports, available to next of kin upon their request, unless for good cause shown the attorney for the Commonwealth of the appropriate law enforcement agency requests that such disclosures not be made. (Policy Statements, Medical Examiner, May 15, 1974)

INFANT DEATH: No statutory indication.

WASHINGTON

TITLE: County coroner. However, in counties of the 4th, 5th, 6th, 7th, 8th, and 9th classes, no coroner shall be elected and the prosecuting attorney shall be the ex officio coroner. Wash. Rev. Code § 36.16.030.

TERM: Unspecified in Wash. Rev. Code Const., Art. XI, § 4 for the county prosecuting attorney. For smaller county, no statutory indication.

APPOINTMENT: Elected by the people of the county; Wash. Rev. Code § 36.16.030 - in counties of the 1st, 2nd, and 3rd class. Counties of the 4th, 5th, 6th, and 7th class, the prosecuting attorney is elected; Wash. Rev. Code Const., Art. XI, § 4.

QUALIFICATIONS: No statutory indication.

SUBJECT DEATHS: Suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; where the circumstances of death indicate death was caused by unnatural or unlawful means; where death occurs under suspicious circumstances; where a coroner's autopsy or post mortem examination or coroner's inquest is to be held (see Wash. Rev. Code § 36.24.020); where death results from: unknown or obscure causes, violence, within one year following an accident, drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation, or smothering; where death is due to premature birth or stillbirth, or a virulent contagious disease, or suspected contagious disease which may be a public health hazard; where death results from alleged rape, carnal knowledge, or sodomy; where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends. Wash. Rev. Code Ann. § 68.08.010.

PROCEDURE: The coroner has jurisdiction over subject deaths, and he may move such bodies to the morgue. Wash. Rev. Code § 68.08.010. It is a misdemeanor not to notify the coroner of subject deaths. Wash. Rev. Code § 68.08.020. The coroner, in his discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or post mortem examination in any case in which the coroner has jurisdiction over the body. Wash. Rev. Code § 68.08.100. County to bear costs of autopsy. Wash. Rev. Code § 68.08.104.

ACCESSIBILITY: Death certificate - Certificates are required to be filed with the local registrars upon certification of death. Wash. Rev. Code § 70.58.160. Public inspection and copying of records pursuant to procedures in the Wash. Administrative Code is provided for in Wash. Rev. Codes

§§ 42.17.250 through 42.17.340. Reports - under Washington law, reports and records of autopsies or post mortems are confidential, except to the prosecuting attorney or law enforcement agencies having jurisdiction, or to the Department of Labor and Industries in cases in which the department has requested that an autopsy be performed. Any party by showing just cause may petition the court to have an autopsy and the results of such autopsy be made known to such party at his own expense. Wash. Rev. Code § 68.08.105. However, under current practice, autopsy reports and consultations are available to the next of kin.

INFANT DEATH: The coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he has jurisdiction to the University of Washington Medical School for the purpose of having an autopsy made to determine the cause of death. Wash. Rev. Code § 68.08.100. University of Washington Medical School to bear cost of autopsy. Wash. Rev. Code § 68.08.104.

NOTE: Seattle has an appointive Medical Examiner System (see Childs report). See Wash. Rev. Code § 36.24.010 to § 36.24.180 for coroner inquest. See Wash. Rev. Code § 68.08.107 for State toxicological lab and State toxicologist.

WEST VIRGINIA

TITLE: A.) Chief medical examiner. W. Va. Code Ann. § 61-12-3; B.) County medical examiners. W. Va. Code Ann. § 61-12-7.

TERM: A.) Serves at the will and pleasure of the commission. W. Va. Code Ann. § 61-12-3; B.) Three years. W. Va. Code Ann. § 61-12-7.

APPOINTMENT: A.) Appointed by the commission. W. Va. Code Ann. § 61-12-3; B.) Appointed by the commission. W. Va. Code Ann. § 61-12-7. The chief medical examiner may appoint assistants where needed. W. Va. Code Ann. § 61-12-7.

QUALIFICATIONS: A.) Licensed physician in West Virginia, a diplomate or eligible for certification by the American Board of Pathology or American Osteopathic Board of Pathology. W. Va. Code Ann. § 61-12-3; B.) Qualified physicians licensed in West Virgina. W. Va. Code Ann. § 61-12-7.

SUBJECT DEATHS: By violence, or by apparent suicide, or suddenly when in apparent health, or when unattended by a physician or when an inmate of a public institution not hospitalized therein for organic disease, or from some disease which might constitute a threat to public health, or in any suspicious, unusual, or unnatural manner.

PROCEDURE: Medical examiner to be notified by physician in attendance, by any law enforcement officer having knowledge of such death, or by the funeral director, or by any other person present. (Misdemeanor not to notify.) The medical examiner shall take charge of the body, make an investigation, reduce his findings to writing, and submit copies of his report to the chief medical examiner, the prosecuting attorney, and other attorney involved in criminal or civil proceedings surrounding the death, and retain a copy for himself. All forms are prescribed. W. Va. Code Ann. § 61-12-8. The following may determine that an autopsy is advisable and in the public interest or request one: the chief medical examiner, the medical examiner, the prosecuting attorney, or judge of the circuit court of any other court having criminal jurisdiction. The autopsy is to be performed by the chief medical examiner or a member of his staff, or a competent pathologist designated by the chief medical examiner. A medical examiner who is a qualified pathologist may also perform the autopsy and receive additional fees for so performing. W. Va. Code Ann. § 61-12-4, or other existing facilities, W. Va. Code Ann. § 61-12-6, shall be used. Also see W. Va. Code Ann. § 61-12-12.

ACCESSIBILITY: Death certificate - when death occurs in any manner subject to investigation, the medical examiner is required to investigate the cause of death and complete and sign the medical certification on the death certificate. Copies of all records or information in the office of medical examinations are required to be furnished, upon request, to any party to whom the cause of death is a material issue. Under West Virginia law, it is unlawful for any person to permit inspection or disclosure of confidential information contained in records of death, or to copy or issue a copy of all or any part of such confidential information except as authorized by law or by order of a court having jurisdiction or by rule and regulation duly adopted by the State board of health. Current regulations provide that the State Registrar is required to permit the inspection of a record only when he is satisfied that the applicant for such record has a direct and tangible interest in the

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March 7, 1978

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Mr. Bob Steep
Administrative Assistant
to Rep. Terry Gardiner
Pouch V
Juneau, Alaska 99801

Dear Mr. Steep:

It has come to my attention that you are involved with the evaluation of SB285/HB392 - the medical examiner bill. I am a pathologist with 11 years of experience in Alaska and 4 in Washington in the practice of forensic pathology. Approximately 5 years ago I was the author of a bill which was introduced by Senator Groh and Representative Fritz, which also sought to establish a medical examiner system for Alaska. During my research of the subject while writing that bill, I formed some opinions which you might find useful.

First of all, the situation which existed within the court system then has now changed, so that I no longer feel quite so strongly that our present system needs modification. We are currently doing things in a manner which has many similarities with the medical examiner system - a situation brought about by the personnel currently in charge of this function within the court system - specifically, Dolores Wilks, the local coroner who does an admirable job. The goal of my bill 5 years ago was to allow us to work essentially as we now are.

My comments will be directed first to the new bill, and then to its accompanying fiscal note. The former is, I believe, a bad bill and should be defeated; and the latter is inaccurate and grossly underestimates the cost of the operation.

SB285/HB392:

1. Section 18.52.030 (b & c). In a state as small as ours, the requirement of board certification or eligibility in forensic pathology might create difficulty in filling the position if no such person could be recruited, and the requirement that he be an exempt employee would seem to preclude contracting with physicians such as myself who may not be anxious to leave a current position to become a state employee.

2. Section 18.52.040 (b) (4,8 & 9). The exhumation of a body should be done by court order, not at the whim of the SME. The medical examiner should not have the authority to "take possession" of items such as those listed, or to issue subpoenas. These are police and/or court functions. These 3 paragraphs seem to grant the SME more power and authority than any other investigative agency of the government. One should not assume that some future SME would exercise this authority with restraint.

3. Section 18.52.050 (a) (2). The time limitation should be stricken. Frequently a person may die of a known disease which runs its course in less than 24 hours. On the other hand, a patient may die of an unknown disease after a long lingering illness (a situation covered by paragraph 3).

4. Section 18.52.085. The same comments apply here as to item 2 above. Again, the SME is given too much authority and power.

FISCAL NOTE:

The tenor of the note seems to be to save money for the court system, but seems not to be concerned with the total cost to the State. As a taxpayer, my concern is with the latter.

The fiscal note apparently assumes that funeral directors will provide personnel and vehicles for removal of bodies from "scene" to morgue at no cost to the state, since no provision is made for this function. My estimate of this cost for the Anchorage area alone 5 years ago was $250,000 per year based on a minimum of 2 hearses and 4 drivers to provide 24 hour coverage. No provision is made for an x-ray department, a toxicology or histology laboratory. These are vital functions of the office and while provision is made in the law for contracting laboratory work, the necessity for responsibility for its quality makes this impractical. The laboratory should be directly under the supervision of the SME since he must vouch for the quality of the work performed by it in court. These are very expensive operations requiring tens of thousands of dollars worth of equipment and many personnel.

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No provision is made for personnel other than the SME and two secretaries. The morgue will require dieners (autopsy assistants) who may or may not be the same people as the hearse drivers. Again, the morgue must be staffed continuously.

No provision is made for transportation of bodies to Anchorage from bush communities.

The note provides for only one medical examiner for the state - apparently assuming that he can do all the work that is to be done. Currently 3 of us are working in this field in Anchorage alone (admittedly only part time), and approximately one full time equivalent would be necessary for Fairbanks and Southeast. These expenses need to be accounted for in the fiscal note even though the physicians doing the work may be associate medical examiners. More clerical personnel would then be needed beyond the two provided for.

The note lists a 3,000 sq. ft. morgue for $54,000 annually. It would seem unlikely that a facility of that size could be obtained for that little especially since no provision is made for utilities and depreciation. A provision of $5,000 is made for "remodeling of Anchorage headquarters". It sounds as though the site for the office has already been chosen - which seems premature at least. A provision of $10,000 is made for a "photographic microscope" - an incredibly expensive piece of equipment, (my own photographic microscope cost approximately $2,000) - but no provision is made for a histology laboratory to make the slides to be viewed and photographed (an omission referred to above). A provision is made for a radio-equipped car, but none is made for its operating expenses and depreciation.

In summary, I think the note hugely underestimates the cost of this proposed office. I would be willing to come to Juneau to testify against the bill if that would seem useful.

Sincerely yours,

Donald R. Rogers, M.D.
Pathologist

DRR/ds

cc: Senators Croft, Rodey, Colletta, Tillion and Huber
Representative Hugh Malone

2841 DEBARR ROAD • ANCHORAGE, ALASKA 99504 • 907-276-2131

Members file

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STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

JAY S. HAMMOND, GOVERNOR

Richard L. Burton
Commissioner

DIVISION OF STATE TROOPERS / POUCH N – JUNEAU 99811

P.O. Box 6188 Annex
Anchorage, AK 99502

April 3, 1978

Honorable Terry Gardner
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Gardner,

At your request, I am addressing myself to the investigation area of House Bill 392. As I stated before the committee, the medical examiner, and law enforcement will have to have a very close working relationship. I do feel that if the bill is adopted, responsibilities concerning death investigations in some cases should be specifically directed to law enforcement agencies.

Section 18.52.040(b)(8) directs the medical examiner to take possession or excercise control of the body and effects of the deceased and any weapons, instruments, vehicles, buildings, premises, or other things which he has reason to believe will assist in a determination of the cause and manner of death. Investigations in the cause of a violent death or unattended death should continue to be the responsibility of law enforcement agencies. Possession of instruments, weapons, vehicles, buildings, or other things which are of an evidentory nature in the death investigation, should be directed to the responsible law enforcement agency. Law enforcement agencies could be directed to submit investigative reports to the medical examiner's office to assist in any hearing or any inquiries to be conducted by that office. Control of the body, to some extent, should be at the discretion of the medical examiner. It is this office which conducts the autopsy, a very critical phase of the death investigation. The team effort which is needed between the medical examiners office and law enforcement is very evident, the expertise required in both areas of responsibility go toward making a complete investigation.

Section 18.52.070(c) should be expanded to include that a copy of the autopsy report should also be filed with the law enforcement agency conducting the death investigation. With this adeundem written into law, it could offset any rights to privacy areas, which may be addressed when police agencies have possession of the autopsy report.

Section 18.52.040(d)(2) as previously stated, the investigation into violent deaths or unattended deaths should be conducted by law enforcemnet agencies. This could be very easily accomplished with the cooperation and in conjunction with the medical examiners office, as I have previously stated.

I hope my comments are of assistance to the members of the committee that is evaluating this proposed law.

Sincerely,

U. D. Bi

Capt. U. D. Bi
Commander
"C" Detachment

Maj. J. D. Vaden, Field Enforcement Commander, Zone I
Col. T. R. Anderson, Director, Alaska State Troopers
Commissioner Richard L. Burton
UDB:deu

COMMENTS CONCERNING HB392/SB 285

The above costs were prepared with the advice of the Court System and a Pathologist.

Currently, the Court System has a budget of 225.0 for autopsies, statewide. We are projecting that the medical examiners office expenditures for FY 79 will be $212.1. Establishment of the office will reduce the need for funds currently expended by the Court System by $45.0 and this amount can be applied to funding the Office of Medical Examiner.

The balance of the Court System's current allocation of $225.0 will be required for maintaining the ongoing program in statewide locations remote from the State Medical Examiner's office.

Revised Fiscal Note

4/25/77

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 392/SB 285
Title relating to inquiries into death; establishing a state medical examiner
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES		42.0	100.1	105.0		
200 TRAVEL		5.0	26.0	28.0		
300 CONTRACTUAL		16.3	74.8	82.0		
400 COMMODITIES		.6	1.2	1.2		
500 EQUIPMENT		27.3	10.0	10.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		91.2	212.1	226.2		

FUNDING (Thousands of Dollars)

GENERAL FUND		91.2	167.1	181.2		
FEDERAL FUNDS						
OTHER (Specify)						
OTHER FUNDING			45.0	45.0		

POSITIONS

FULL TIME		2	3	3		
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See Attached

IV. DATE Revised 4/25/77 PREPARED BY Trygve R. Hermann, Director
AGENCY PUBLIC SAFETY/Div. of Administrative Services
PHONE 465-4350

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
Alaska Court System

33-001 (Rev. 10/76)

HB 392
FISCAL NOTE DETAIL

Catagory		FY 78	FY 79	FY 80
100	Chief Medical Examiner	32.3	64.7	64.7
	Med. Records Assistant	8.8	17.7	17.7
	Med. Records Assistant	.9	17.7	17.7
	Inflation			4.9
	Total	42.0	100.1	105.0
200	Commission Travel	5.0	5.0	5.0
	Chief Medical Examiner		6.0	6.0
	Assoc. & Assistant Examiner		15.0	15.0
	Inflation			2.0
	Total	5.0	26.0	28.0
300	Rental of 3,000 Sq. Ft. Autopsy			
	Work space inc. cooler & freezer	9.0	54.0	54.0
	Remoldeling for Anch. Headquarters	5.0		
	Printing Costs (forms & proceedures)		10.0	10.0
	Telephone	.5	3.6	3.6
	Mag Card II Typ	1.8	3.6	3.6
	AJIS Terminal		3.6	3.6
	Inflation - Other			7.2
	Total	16.3	74.8	82.0
400	Commodities (office supplies)	.6	1.2	1.2
500	Photographic Microscope	10.0		
	Typewriter	.8		
	Furniture	2.0		
	File Cabinets (Fire proof)	2.0	1.0	
	Photo Equip.	3.5	1.0	
	Instruments	1.0		
	HWCF Car Purchase	5.0		
	Radio	2.0		
	Dictation Equipment	1.0		
	Other - Unspecified		8.0	10.0
	Total	27.3	10.0	10.0

HB 392
HB 753
HB 860 Mopeds

$50 an hour for Autopsy

Bissant - Matthews
Rogers
} 2 bidders ⇒ provide morgue

Funeral Homes - keep bodies

Payed as services rendered

6 Mo after contract terminated No Morgue

Move out of Public Safety → HESS

} Bodies in the bush areas }

Need a state run mortuary

A. Better Autopsies

Presentation to the House Judiciary Committee on HB 392

By Lee Moeglein

In February, 1977, the Alaska Court System entered into a contract with Forensic Sciences, Inc. (FSI) of Anchorage, who was to provide the court with with autopsy and patholgy services.

Bidding for this contract called for "physician services." But the contract was entered into with a corporation and not with a physician, and not even with a corporation which was obligated to employee a physician.

Unsuccessful bidders were Drs. Michael T. Propst and Donald R. Rogers, the only others to offer a bid. They have a successfully and long history, past and current, of providing the services called for in the FSI contract with the Court System.

These pathologists, apparently lowest bidders, were not awarded the contract. The reason may have been that FSI offered the state a "free autopsy facility" in an obscure item of the bid under the classification "other." No standards or values were requested or defined in the bidding process for an autopsy facility. Because the state did not approach Rogers and Propst on this subject they had no opportunity to bid successfully. The contract went to FSI after a bidding procedure which did not include

a major and most expensive item in the bid request. Rogers and Propst, today, are of the opinion that the bidding process was rigged to favor FSI.

In the agreement between FSI and the Alaska Court System, FSI agreed to construct an autopsy facility. Completion was to occur on or about May 1, 1977. Apparently, the Court system did not check the financial condition of FSI, or on their ability to provide an autopsy facility prior to the commencement of the contract.

The structure or facility was never commenced nor was it ever completed on or about May 1, 1977. It was, therefore, a major breach of the contract and a failure of performance which should have terminated the contract according to its terms. This was not the case. The Alaska Court System continued to pay for FSI's services. The services of Drs. Rogers and Propst were still available at a lower cost but were never used.

FSI was incorporated in Alaska on November 9, 1976 only ten weeks before entering into this contract. It had no parent corporation at this time. It's capital stock consisted of $1,000. How was it to provide a completely equiped autopsy and laboratory for death investigation for the state of Alaska with $1,000?

In mid-1977, the Department of Public Safety entered into an agreement with FSI for law enforcement agency testing and laboratory services. (FSI still had not constructed a lab.) Again, apparently no check of FSI's financial history or posture was made or requested. The Department of Public Safety agreed to advance FSI $135,000 in cash, to pay $11,750 monthly for future services, and grant $15,000 for the establishment of a crime lab. Ultimately, about $60,000 in services were performed by FSI for the state of Alaska.

According to Julius Brecht, the director of Alaska's Business, ities and Corporations division, FSI paid an advance fee of $6,300 to a Washington Corporation--Financial Marketing Systems (FMS). This was apparently paid to find a $750,000 loan. FSI had no credit ability within the established business community. FSI became a victim of FMS which may have numerous criminal fraud charges pending against it. Julius Brecht issued a Cease and Desist order against FMS and FSI was effectively bankrupt.

The Court System was fleeced; the Department of Public Safety was fleeced and the people of Alaska were fleeced. To date, no one has publicly accounted for at least $125,000.

Susan Burke of the Alaska Court System, author of HB 392, is of the opinion that none of this is relevant to HB 392. You may think it is relevant. The same people who wrote this bill

are the same people whose poor judgement resulted in the Court System and the Department of Public Safety getting fleeced. A close examination of the fiscal note that accompanies this bill will once again establish that nothin was learned. The state of Alaska could be headed for a much bigger disaster if this bill becomes law.

Thank you.

Lee Moeglein

In February of 1977, The Alaska Court System and Forensic Sciences, Inc. of Anchorage entered into an agreement whereby F.S.I. would provide the court with autopsy and pathology services.

The agreement came as the result of a bid. The other bidders were Dr. Michael T. Propst and Dr. Donald R. Rogers who made a joint bid in competition with F.S.I. The Dr.'s were the apparent low bidders for pathology services but were not awarded the contract because F.S.I. under an item called other, offered the state a free autopsy facility. (Dr. Rogers and Propst both feel that the bid was rigged, since no one ever approached them about free autopsy facilities, nor was this item included on the bid itemization.)

In the agreement between F.S.I., and the Alaska Court System, F.S.I. agreed to construct an autopsy facility. Completion according to the terms of the contract on or about May 1, 1977. This structure was never built or provided from the time the contract was let (commencing March 1, 1977) until the time that F.S.I. went broke. It was a direct violation of the agreementbetween F.S.I. and the Alaska Court System, yet the court continued to pay for their services instead of contracting withe Dr. Rogers and Propst which would have been less costly.

Beginning fiscal year 1977-78, the Department of Public Safety entered into an agreement with F.S.I. for law enforcement agency tests.

The Department of Public Safety agreed to make an advance payment of $135,000 plus monthly payments of $11,750 to F.S.I. Aproximatly $60,000 worth of services were performed, apparently $75,000 worth were not. In addition, the department of Public Safety gave F.S.I. $15,000 to establish a crime lab.

In late 1977 F.S.I. went broke. Subsequent inquiries by Bob Porterfield of the Anchorage Daily News found that F.S.I. made an attempt to negoiate a large loan with Marketing Management Systems of Tacoma, Washington. Seems they made a substantial down payment of about $70,000 in an attempt to borrow $700,000.

They got fleeced

Susan Burke of the Alaska Court System says that none of this is relevant to HB 392. I think it is. The same people whose judgement got the Department of Public Safety and the Court System involved with F.S.I. in the first place, are the ones who developed HB 392 and the accompanying fiscal note. I don't think there judgement is any better now than it was then.

Questions: Why didn't the Alaska Court System terminate its contract with F.S.I. when it became apparent that they could not meet the May 1 deadline for construction of an autopsy facility?

Why did the Department of Public Safety advance so much money for lab fees?

Was the attempted loan with marketing management systems of Tacoma an attempt to secure funds to build an autopsy facility and lab to meet the terms of the contract between the Alaska Court System and Forensic Scineces, Inc.?

Alaska State Legislature

SENATOR
JOE ORSINI
2912 ALDER DRIVE
ANCHORAGE, ALASKA 99504

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811

Senate

March 20, 1978

Richard Burton, Commissioner
Department of Public Safety
450 Whittier St.,
Juneau, AK 99801

Dear Commissioner Burton:

In 1977, between July and September, the Department of Public Safety was a party to a contract with Forensic Sciences, Incorporated. Please provide us with a copy of that contract and answers to the following questions.

According to an Anchorage Daily News article written by Bob Porterfield, the contract called for an advance payment by the state of $135,000. Why was it necessary for the state to pay for services in advance? Has the state suffered any losses as a result of any contracting party's failure to perform? If so, has any action been taken to recover any losses?

The article indicates that a forensic laboratory may be established within the Department of Public Safety. If there are present plans to do so, please send us any data in your possession, especially as it pertains to the costs and future operations of any laboratory.

Senate Bill 285, as you know, will give a future state medical examiner the power to establish a laboratory, or to contract for services from existing laboratories. Any information you can provide--especially any concerning the cost or operation if a laboratory is to be established, or the performance to be expected if a contract is to be entered into--would be most appreciated.

Thank you for your attention to this request.

Sincerely,

Steve A. Mizera

STEVE A. MIZERA
Administrative Assistant

SAM/hs

Municipality of Anchorage

625 C STREET
ANCHORAGE, ALASKA 99501
(907) 279-1441

GEORGE M. SULLIVAN,
MAYOR

ANCHORAGE POLICE DEPARTMENT

March 16, 1978

TO: Members of the Legislature of the State of Alaska

RE: Comments on Sentate Bill 285 - Office of the Medical Examiner

After a review of Senate Bill 285, I would respectfully wish to express some concerns that exist within my department and, I feel, many other municipal police agencies in our State.

First, I generally support the concept of having a medical examiner. My concerns with this particular bill fall in two general areas; the placement of the office within the Department of Public Safety, and the extent of responsibility of the examiner.

I would much rather see this office remain within the Court system. The established neutrality of this institution is necessary to the effective operation of a medical examiner.

Currently, it is the responsibility of the physicians performing this function to attempt to determine the "cause" of death, clearly a medical application. In Senate Bill 285, it would appear that the medical examiner is responsible for evidence collection. This function and the subsequent handling and processing of the evidence go toward establishing the "manner" of death. The expertise necessary to effectively perform this task resides within the existing law enforcement agencies and correspondingly this responsibility should remain there.

For these reasons, I would oppose passage of the Medical Examiner bill in its present form.

Brian S. Porter

Major Brian S. Porter
Acting Chief of Police

BSP/dl

76

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION:

POUCH V
JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-4948

SUITE 203
207 EAST NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99503
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE
DISTRICT 7, ANCHORAGE

MEMBER OF:
FIFTH STATE LEGISLATURE
NINTH STATE LEGISLATURE
TENTH STATE LEGISLATURE

COMMITTEES:
HEALTH
EDUCATION AND
SOCIAL SERVICES
FINANCE SUB-COMMITTEE
ON TRANSPORTATION

March 21, 1978

The Honorable Joseph Orsini
Alaska State Senate
Pouch V, Mail Stop 3100
Assembly Building, Room 100
Juneau, AK 99811

Re: Senate Bill 285

Dear Senator Orsini:

I concur with the observations of the Anchorage doctors on this bill and believe it would be a mistake for the State to involve itself in this business at this time.

Very truly yours,

Mike Beirne

Dr. Mike Beirne
State Representative

MFB:jss

Municipality of Anchorage

625 C STREET
ANCHORAGE, ALASKA 99501
(907) 279-1441

GEORGE M. SULLIVAN,
MAYOR

ANCHORAGE POLICE DEPARTMENT

March 16, 1978

TO: Members of the Legislature of the State of Alaska

RE: Comments on Sentate Bill 285 - Office of the Medical Examiner

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For these reasons, I would oppose passage of the Medical Examiner bill in its present form.

Brian S. Porter

Major Brian S. Porter
Acting Chief of Police

BSP/dl

Susan Burke — Bissett - Matthews

① Should be in Executive not court —

② Colonels controlling peoples estates - Keep it
"Administration of estates"

③ revise

④ Dept of Public Safety - conflicts
Commission to resolve those conflicts - checks
→ HESS in 94th Legis version

⑤ inability to monitor contract

Lead to pay $50 extra per body to funeral homes
Autopsies
Estates

We are replacing Private sector
Credibility of Police testing own evidence

Mr. Lee Moeglein - Evergreen Memorial Funeral Chapel
— Does Autopsy reports
Cost will go from $225.0 to $ 1 million

① Funeral homes would get out of the business
② No - lab 1. toxicology 2. histology
③ What about autopsy not done by medical examiner

II don't put in Public Safety

III Not many states have pure Med examiner ~~Coroner system~~ only

IV Remove 200,000 income to Coroners now

Set standards — now for autopsy

(1) set up Medical examiner Commission
(2.) set standards
(3) Put Admin agency
(4) let them contract for services like now

Rogers & Propst today believe the bidding process was rigged against them.

Forensic Sciences, Inc went belly-ups just 10 weeks after

Capt Dean Bivens —
Public Safety supports

Page 3 — Section (C)

Page 8 18.52.090 section C

Page 10, line 26 — Add
medical examiner & police officers

~~D.A.~~

Investigations be by ~~police officer~~ not Medical examiner

Medical examiner

Kieth Douglas — F.S.I. Inc.

Narcotics — F.S.I.

D.E.A. was doing work in San Francisco

↘

Set up own lab now

Dr. Bissant - Mathews → was ~~the~~ employee

~~was~~ helped

7 months No contract

$78,750

billings for $8,000 — didn't pay

Bought equipment — $4,200 — $24,000

2,000 on water purifier

Anchorage Police Department Employees Assoc.

P. O. Box 1539
Anchorage, Alaska 99510

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99801

Attention: Bob Speed

April 12, 1978

Dear Mr. Gardiner:

I wish to take this opportunity to extend our appreciation for your current investigation into the defunct laboratory which had a contract with the State of Alaska which was arranged by the Court System and administered through the Department of Public Safety.

I have been advised of some additional information that seems to suggest that the letting of the contract and proposed House Bill number 392 (the Medical Examiner's Bill) may have been in some way related. It appears that the "bill" was drafted with a specific person in mind.

I have been advised that Mr. Art Snowden and Mr. Rick Berrier of the Alaska Court System were both contacted while the contract was still in the "talking" stage and encouraged to conduct an investigation into the matter. They were requested to contact individuals within King County, Washington regarding the Forensic Pathologists. Persons contacting Mr. Snowden and Mr. Berrier were respected members of the law enforcement community, and I have been advised that an assistant District Attorney and other pathologists also made contact with either Snowden, Berrier, or both.

It would be interesting to learn who drafted the Medical Examiner's Bill and if that person was Deputy Attorney General, Dan Hickey, and if he had any person "in mind" at the time it was drafted. It seems the bill was drafted at about the same time the contract was let.

I have no idea as to what the actual cost to the taxpayer would be under the proposed, but I would guess it to be high.

As I mentioned in my letter of 3-13-78, the F.B.I. laboratory conducts scientific examinations and will testify at no cost (including transportation and per diem) to the State.

Page two, continued:

I am sending along some of the questions I have regarding the proposed Medical Examiner's Bill.

I realize that I offer more questions than I furnish answers, but I am sure that the independent investigation of your committee will resolve these issues.

If I can be of any assistance to you in this endeaver, please do not hesitate to contact me.

Sincerely,

Ken Foster

Ken Foster,
President, Anchorage Police
Department Employees Association

KF/clr

Representative Terry Gardner
Attention, Bob Speed
Pouch V
Juneau, Alaska

March 13, 1978

Reference: House Bill No. 392 - Medical Examiners Bill

I would like to take this opportunity to direct comments toward this bill. The concept of a State Medical Examiner is a good one; however as the bill is written, the Anchorage Police Department Employees Association is against it for the following reasons:

It would appear from the bill that the Department of Public Safety will direct all death investigations. It would seem that the medical examiners office should be a separate entity and free of all political pressure and not give the appearance of being controlled by the police.

The responsibility of the medical examiner should be to establish "cause of death" and not "manner of death." If the medical examiner has the authority to establish manner as well as cause, there would be no need for a coroner's inquest. The "manner of death" is important not only to the police but also to a survivor when one thinks in terms of double indemnity benefits.

The term "manner of death" is defined as: (1) homicide; (2) suicide; (3) accidental; (4) natural causes; (5) undetermined.

The way the bill is written, the medical examiner has the power to seize and control physical evidence at a crime scene and to send this evidence to the laboratory of his choice for the needed examinations. Currently the FBI laboratory in Washington D.C. provided this service along with expert witnesses to testify concerning the results of the examinations at no cost to the State. If the medical examiner elects to send evidence to a local lab of his choice, who is to pay for the examination and subsequent expert testimony? Can a small

community afford to pay for these services?

It has been suggested that police in outlying areas are not trained well enough in the collection of evidence, however they are currently receiving the required number of training hours, as is every Municipal Police Department in Alaska. They are in fact taught by certified instructors at either the Department of Public Safety Academy in Sitka, or the Anchorage Police Department academy in Anchorage.

When this bill was proposed last year there was a private crime lab that had one forensic pathologist. That lab was successful in obtaining a contract with the State to perform autopsies and to do a limited amount of examinations.

That lab has since dissolved and at an apparent loss to the State of over $100,000.00.

The medical examiner's office, as proposed in this bill, would also have the power to conduct hearings and exhume bodies; functions which should be left within the realm of the court.

I have talked to members of other law enforcement agencies and the concensus of opinion is the same as that of our association. Ernest Beauchamp, president of the Alaska Peace Officers Association, is currently reviewing the bill and I am sure you will be hearing from him.

Also our association has written a "memo of opposition" to Acting Chief of Police Brian Porter who intends to ask the Municipality to take appropriate action.

At least one of the two "board certified" forensic pathologists in Alaska feels that a medical examiner should not be "picking up criminal evidence" at a crime scene and should assist the police in an investigation, not control it.

Thank you for your attention to this matter. If I can furnish you with additional help or information, please advise me.

Ken Foster,

Ken Foster

President, APDEA

KF/clr

Moeglein

proposed CS for HB 392
from

Mrs Wilkes

written by Judge Brewer
Brewer wants to divorce self from this bill &
Forensic Sciences

D. Bevins

Dean Bevins
may have invested $3,000
in Forensic Sciences

MARCH 27, 1978

BOB SPEED
ADMINISTRATIVE ASSISTANT
HOUSE JUDICIARY COMMITTEE
POUCH V
JUNEAU, ALASKA 99811

BOB:

ENCLOSED IS A COPY OF A LETTER I SENT TO REP-RESENATIVE CARPENTER. ALSO A COPY OF A SUBSTITUTE VERSION OF HB392. I THINK MY LETTER TO HIM EX-PLAINS ITS' ORIGIN AND EXISTANCE.

AT THE AIRPORT ON THE MORNING OF MARCH 24, I HAD THE OPPORTUNITY TO TALK TO CAPTAIN DEAN BIVINS OF THE ALASKA STATE TROOPERS. I WANTED TO MAKE IT CLEAR TO HIM THAT OUR PROBLEMS WERE NOT WITH IN-VESTIGATORS IN THE CRIMINAL INVESTIGATION BUREAU, BUT RATHER WITH SOME INCOMPETENT ADMINISTRATION. WE HAVE NOTHING BUT HIGH REGARD FOR THESE MEN IN THE FIELD.

HE SAID THE ONLY RFASON HE WAS IN FAVOR OF THE BILL WAS THAT IT WOULD MEAN THEY COULD HAVE A PATHOLOGIST AT THE SCENE. I POINTED OUT TO HIM THAT PATHOLOGISTS COULD BE AT THE SCENE NOW IF THEY WERE REQUESTED AND IF THE COURT SYSTEM OR THE STATE POLICE WERE WILLING TO PAY FOR THEIR TIME. HE AGREED.

IF THE DEPARTMENT OF PUBLIC SAFETY COMES UP WITH A NEW FISCAL NOTE FOR THE BILL, COULD YOU PLEASE SEND A COPY TO ME RIGHT AWAY. ALSO, IF AT ANY TIME YOUR COMMITTEE WOULD LIKE ME TO RE-APPEAR TO ANSWER QUESTIONS, I WOULD BE GLAD TO. JUST GIVE ME A LITTLE WARNING SO THAT I CAN REARRANGE MY SCHEDULE.

THANKS FOR YOUR COURTESY.

Lee Moeglein

LEE MOEGLEIN

Evergreen Memorial Chapel, Inc.

737 E STREET TELEPHONE 279-5477
P.O. BOX 537 ANCHORAGE, ALASKA

MARCH 27, 1978

REPRESENTATIVE LARRY CARPENTER
POUCH V
JUNEAU, ALASKA 99811

SIR:

ENCLOSED IS A COPY OF A SUBSTITUTE VERSION OF HOUSE BILL 392. I HAD TO QUICKLY CATCH AN AIRPLANE THE MORNING OF MARCH 24, AND WAS UNABLE TO GET THIS TO YOU SOONER.

SINCE THE JUDICIARY COMMITTEE STILL WANTS TO ASK MORE QUESTIONS ABOUT HOUSE BILL 392, IT MAY BE A BIT PREMATURE TO PROPOSE A SUBSTITUTE. PERHAPS WHEN YOU HEAR MORE ABOUT THE BILL, THIS SUBSTITUTE WILL SEEM APPROPRIATE.

IT WAS WRITTEN BY JUDGE JOSEPH BREWER, A DISTRICT COURT JUDGE HERE IN ANCHORAGE, AND BY MRS. DOLORES WILKS. SHE IS THE CORONER AND PUBLIC ADMINISTRATOR WITH THE ALASKA COURT SYSTEM HERE IN ANCHORAGE.

THE INTENT OF THIS MEASURE IS TO ATTEMPT TO IMPROVE THE CURRENT SYSTEM. SPECIFIC QUESTIONS WHICH YOU MIGHT HAVE CONCERNING ITS' CONTENT SHOULD PROBABLY BE DIRECTED TO THEM.

I'LL SEND A COPY OF THIS LETTER TO YOUR CONSTITUENT, JAMES HIEBER AT CHAPEL OF THE CHRIMES IN FAIRBANKS. ALSO A COPY TO THE COMMITTEES AMINISTRATIVE ASSISTANT, BOB SPEED.

MY APOLOGIES FOR NOT BEING ABLE TO HONOR YOUR REQUEST FOR IT LAST FRIDAY.

RESPECTFULLY,

LEE MOEGLEIN

Evergreen Memorial Chapel, Inc.

737 E STREET TELEPHONE 279-5477
P.O. BOX 537 ANCHORAGE, ALASKA

MARCH 17, 1978

BOB SPEED
ADMINISTRATIVE ASSISTANT
HOUSE JUDICIARY COMMITTEE
POUCH V
JUNEAU, ALASKA 99811

DEAR BOB,

THANK YOU FOR YOUR COURTESY DURING OUR RECENT CONVERSATION IN JUNEAU. ALSO APPRECIATE THE CALL CONCERNING THE MEETING WHICH WAS TO BE HELD TODAY AND THE SUBSEQUENT CALL TO INFORM US IT WAS CANCELLED. PLEASE INFORM ME WHEN YOU ARE READY TO GO AGAIN SO THAT I WILL HAVE TIME TO GET TO JUNEAU.

AS YOU REQUESTED, I AM PUTTING MY COMMENTS IN WRITING CONCERNING THE BILL. (HOUSE BILL 392-MEDICAL EXAMINER) I AM ALSO ATTACHING A DETAILED COST ESTIMATE FOR IMPLEMENTING THE BILL. MAJOR BRIAN PORTER OF THE ANCHORAGE POLICE DEPARTMENT HAS BEEN EVALUATING THE BILL. WHEN HE LEARNED THAT YOU WERE GOING TO MEET ON THIS BILL TODAY, HE PREPARED A STATEMENT WHICH HE ASKED ME TO TAKE TO JUNEAU WITH ME. I'M ENCLOSING A COPY OF THAT STATEMENT. I'LL BRING THE ORIGINAL WITH ME WHEN YOU MEET.

OUR FIRM HAS BEEN A PART OF THE CURRENT DEATH INVESTIGATION SYSTEM IN ALASKA SINCE ITS' INCEPTION. WE, ALONG WITH OTHER FUNERAL HOMES, HAVE PROVIDED THE ALASKA COURT SYSTEM WITH A DELIVERY SYSTEM, FACILITIES, EQUIPMENT AND ASSISTANCE WITH AUTOPSIES FOR YEARS.

DURING THOSE YEARS AND DUE TO OUR EXPERIENCE WE HAVE BECOME PRIVY TO A LOT OF INFORMATION WHICH THE GENERAL PUBLIC IS UNAWARE OF. OUR OBJECTIONS TO HB392 ARE BASED ON THAT KNOWLEDGE AND EXPERIENCE.

WE OPPOSE IT FOR THE FOLLOWING REASONS:

1. <u>COST</u> THE FISCAL NOTE FOR THE BILL GROSSLY UNDERESTIMATES THE COST OF DEVELOPING AND CONTINUING THE SYSTEM WHICH YOU ARE CONSIDERING. ONE OF THE MORE GLARING ERRORS IS THE ASSUMPTION THAT FUNERAL HOMES WILL CONTINUE TO PROVIDE THE DELIVERY SYSTEM. WE PROVIDE THIS SERVICE NOW AT $20 PER TRIP. (LOOMIS SECURITY AND THE MUNICIPALITY OF ANCHORAGE ESTIMATE THAT IT WOULD COST AT LEAST $120 TO PROVIDE THIS SERVICE PER TRIP) THE REASON THAT WE ARE WILLING TO DO IT AT SUCH A REDUCED RATE IS BECAUSE THE STATE ALSO PAYS US FOR THE USE OF OUR FACILITIES FOR THE AUTOPSY ($50 FOR FACILITIES, ASSISTANCE, INSTRUMENTS, EQUIPMENT, CLEAN UP PER AUTOPSY). PROVIDING THIS SERVICE ALSO MEANS THAT IN ALL

Evergreen Memorial Chapel, Inc.

737 E STREET TELEPHONE 279-5477
P.O. BOX 537 ANCHORAGE, ALASKA

PROBABILITY WE WILL ALSO PROVIDE FUNERAL SERVICES TO THE NEXT OF KIN UPON COMPLETION OF THE AUTOPSY.

WITH THE PASSAGE OF THIS BILL, THERE WOULD BE NO ECONOMIC JUSTIFICATION FOR OUR CONTINUING TO PROVIDE DELIVERY AT SUCH LOW COST. THE STATE'S DELIVERY SYSTEM WOULD EVAPORATE. THE STATES COST ANALYSTS HAVEN'T CONSIDERED THIS IN THEIR FISCAL NOTE.

OTHER GLARING OVERSIGHTS IN THE FISCAL NOTE APPEAR. THERE IS NO PROVISION FOR THE COST OF EITHER SETTING UP A TOXICOLOGY OR HISTOLOGY LABORATORY, OR FOR CONTRACTING THE SERVICE OUT TO A PRIVATE PARTY--ALTHOUGH THE BILL AUTHORIZES THE MEDICAL EXAMINER TO DO ONE OR THE OTHER.

THE FISCAL NOTE STATES THAT THE MEDICAL EXAMINER COULD DO 300 AUTOPSIES PER YEAR. THERE ARE NO PROVISIONS TO PAY AN ASSOCIATE OR ASSISTANT MEDICAL EXAMINER TO DO THE OTHER 300 THAT WOULD BE NECESSARY. OR TO CONTRACT THEM OUT.

NO ESTIMATES ARE MADE FOR THE COST OF ESTABLISHING ASSISTANT MEDICAL EXAMINER OFFICES IN CITIES AROUND THE STATE. ALSO, THERE ARE NO PROVISIONS MADE FOR ADMINISTRATIVE COSTS, SUCH AS BOOKEEPING, ACCOUNTING, LEGAL AID, ETC. WHICH COULD EASILY ADD AN ADDITIONAL 15% TO THE TOTAL COST OF THE SYSTEM.

AS NEAR AS WE CAN ESTIMATE, YOU WOULD AT LEAST TRIPLE THE PRESENT COST OF PERFORMING THE SAME SERVICE--MORE LIKELY QUADRUPLE IT. THE FISCAL NOTE IS JUST THE TIP OFAN ICEBERG. IF THIS BILL PASSES, YOU WILL LEAVE THE LEGISLATURE PRONE TO FUTURE BUDGET INCREASES. INCREASES NECESSARY IN THE NAME OF "JUSTICE" AND "LAW AND ORDER".

2. <u>LEGAL WISDOM</u> IN RESEARCHING THE LAWS OF SISTER STATES, I CAN FIND ABSOLUTELY NO PRECEDENT FOR PLACING THE OFFICE IN THE HANDS OF THE POLICE. THIS FUNCTION SHOULD RIGHTFULLY REMAIN A JUDICIAL RESPONSIBILITY. AS ANCHORAGE POLICE CHIEF BRIAN PORTER PUTS IT, "THE ESTABLISHED NEUTRALITY OF THIS INSTITUTION IS NECESSARY".

3. <u>THE CURRENT SYSTEM WORKS</u>: THE CORONERS WHICH WE WORK WITH STATE WIDE ARE COMPETENT, DEDICATED SERVENTS OF THE COURT AND THE PEOPLE. THEY UNDERSTAND THE LAW. WHEN THEY NEED MEDICAL EXPERTISE TO ASSIST THEM, THEY GET IT. NO SYSTEM RUN BY HUMAN BEINGS IS PERFECT, BUT THESE PEOPLE DO A FINE JOB. WHY TRY TO FIX SOMETHING WHICH ISN'T BROKEN?

4. <u>ECONOMICS</u> IF THIS BILL PASSES, YOU WILL TAKE AT LEAST $200,000 PER YEAR FROM THE PRIVATE SECTOR OF THE STATE'S ECONOMY. MONEY WHICH HELPS PAY FOR FACILITIES AND SERVICES PROVIDED BY INDEPENDENT PHYSICIANS, LABORATORY WORKERS, FUNERAL HOMES, ETC. IN RETURN YOU ARE GOING TO CREATE MORE GOVERNMENT AND THE NEED FOR MORE TAX MONEY. LORD KNOWS WE HAVE ENOUGH GOVERNMENT ADMINISTRATORS AND WORKERS ALREADY.

Other glaring oversights in the fiscal note appear. There is no provision for the cost of either setting up a toxicology or histology laboratory, or for contracting these services from a private party, although the bill authorizes the medical examiner to do one or the other.

The fiscal note states that the Medical Examiner could do 300 autopsies per year. There are no provisions to pay an associate or assistant medical examiner to do the other 300 that would be necessary, or to contract them out.

No estimates are made for the cost of establishing assistant medical examiner offices in cities outside of Anchorage. Also, there are no provisions made for administrative costs, such as accounting and legal services which could easily add an additional 15% to the total cost of the system.

As near as we can estimate, you would at least double the present cost for delivery, facility, assistance, equipment, and pathology services (including toxicology and histology). More likely, you will triple the cost and perhaps quadruple it.

The fiscal note is just the tip of an iceberg. If this bill passes, you will leave the Legislature wide open to future budget increases, increases requested in the name of "justice" and "law and order".

2. LEGAL WISDOM: In researching the laws of sister states, I can find absolutely no precedent for placing the office of the Coroner or Medical Examiner in the hands of the police. This function should rightfully remain a judicial responsibility or at least be independent. Quite frankly, the thought of the whole thing scares me.

3. THE CURRENT SYSTEM WORKS: The coroners which we work with state-wide are competent, dedicated servants of the Court and the people. They understand the Law. When they need medical expertise to assist them, they get it. No system run by human beings is perfect, but these people do a fine job. Why try to fix something which isn't broken? It's like cutting off your head to spite your nose.

4. ECONOMICS: If this system passes, you will take at least $200,000.00 per year from the private sector of the State's economy. Money which helps pay for facilities and services provided by independent physicians, laboratory workers, funeral homes, etc. In return, you are going to create more government and the need for more tax money. Lord knows we have enough civil servants and government administrators already.

Sir, you asked me for some suggestions which would improve the situation. Had to sleep on that a little, but here goes:

A. The Alaska Court System currently sets no standards for the facilities or eqipment used in performing these autopsies (such as size, construction, location, lighting, ventilation, etc.). If there is a problem in this regard, it could easily be solved by setting some standards and letting the private sector provide the facilities.

IN ADDITION TO OUR DESIRE TO SEE THIS BILL DEFEATED, THERE ARE A FEW SUGGESTIONS WHICH MIGHT BE IN ORDER TO IMPROVE THE CURRENT SYSTEM.

A. THE ALASKA COURT SYSTEM CURRENTLY SETS NO STANDARDS FOR THE FACILITIES OR EQUIPMENT USED IN PERFORMING THESE AUTOPSIES. STANDARDS SUCH AS SIZE OF FACILITY, TYPE OF CONSTRUCTION, LIGHTING REQUIREMENTS, VENTILATION, KINDS OF EQUIPMENT, ETC. IF THERE IS A PROBLEM IN REGARD TO THE ADEQUECY OF FACILITIES, IT COULD EASILY BE RECTIFIED.

B. REQUEST THAT THE CURRENT CORONERS BE ALLOWED TO RUN THEIR OFFICES WITHOUT CONSTANT INTERFERENCE FROM COURT SYSTEM ADMINISTRATORS.

C. PROVIDE THE CORONERS WITH ADEQUATE FUNDING TO DO THEIR JOB.

THANK YOU FOR YOUR ATTENTION.

RESPECTFULLY,

LEE MOEGLEIN

MARCH 27, 1978

BOB SPEED
ADMINISTRATIVE ASSISTANT
HOUSE JUDICIARY COMMITTEE
POUCH V
JUNEAU, ALASKA 99811

BOB:

ENCLOSED IS A COPY OF A LETTER I SENT TO REPRESENATIVE CARPENTER. ALSO A COPY OF A SUBSTITUTE VERSION OF HB392. I THINK MY LETTER TO HIM EXPLAINS ITS' ORIGIN AND EXISTANCE.

AT THE AIRPORT ON THE MORNING OF MARCH 24, I HAD THE OPPORTUNITY TO TALK TO CAPTAIN DEAN BIVINS OF THE ALASKA STATE TROOPERS. I WANTED TO MAKE IT CLEAR TO HIM THAT OUR PROBLEMS WERE NOT WITH INVESTIGATORS IN THE CRIMINAL INVESTIGATION BUREAU, BUT RATHER WITH SOME INCOMPETENT ADMINISTRATION. WE HAVE NOTHING BUT HIGH REGARD FOR THESE MEN IN THE FIELD.

HE SAID THE ONLY REASON HE WAS IN FAVOR OF THE BILL WAS THAT IT WOULD MEAN THEY COULD HAVE A PATHOLOGIST AT THE SCENE. I POINTED OUT TO HIM THAT PATHOLOGISTS COULD BE AT THE SCENE NOW IF THEY WERE REQUESTED AND IF THE COURT SYSTEM OR THE STATE POLICE WERE WILLING TO PAY FOR THEIR TIME. HE AGREED.

IF THE DEPARTMENT OF PUBLIC SAFETY COMES UP WITH A NEW FISCAL NOTE FOR THE BILL, COULD YOU PLEASE SEND A COPY TO ME RIGHT AWAY. ALSO, IF AT ANY TIME YOUR COMMITTEE WOULD LIKE ME TO RE-APPEAR TO ANSWER QUESTIONS, I WOULD BE GLAD TO. JUST GIVE ME A LITTLE WARNING SO THAT I CAN REARRANGE MY SCHEDULE.

THANKS FOR YOUR COURTESY.

LEE MOEGLEIN

Evergreen Memorial Chapel, Inc.

737 E STREET TELEPHONE 279-5477
P.O. BOX 537 ANCHORAGE, ALASKA

COMMENTS CONCERNING THE FISCAL NOTE FOR HB392/SB 285

ATTACHED IS A COST COMPARISON COMPILED BY MYSELF WITH ASSISTANCE FROM OTHER PARTIES AND AGENCIES FAMILIAR WITH ALL OR PART OF THE DEATH INVESTIGATION SYSTEM IN ALASKA. THESE ARE NOT INFLATED FIGURES. IF ANYTHING THEY ARE TOO CONSERVATIVE.

WHAT I HAVE ATTEMPTED TO DO IS PREPARE A REALISTIC COMPARISON OF THE COST OF RUNNING THE PRESENT SYSTEM AS OPPOSED TO THE COST OF THE PROPOSED NEW SYSTEM.

THE ALASKA COURT SYSTEM WHICH MANAGES THE CURRENT SYSTEM SAYS THAT IT BUDGETS $225,000 FOR PERFORMING AUTOPSIES.

ADDING TOGETHER THE $180,000 PER YEAR THAT THE COURT SYSTEM PLANS TO KEEP FOR "ONGOING PROGRAMS", $616,660 TO ESTABLISH A LABORATORY AND AUTOPSY FACILITY, THE COST OF ESTABLISHING ASSISTANT MEDICAL EXAMINER OFFICES STATEWIDE, ADMINISTRATIVE COSTS, PURCHASING NEW EQUIPMENT, SERVICING OLD EQUIPMENT, AND ALLOWING FOR INFLATION AND UNKNOWN COSTS WILL EASILY BRING THE COST OF IMPLEMENTING THIS BILL TO IN EXCESS OF ONE MILLION DOLLARS PER YEAR.

A MILLION DOLLARS PER YEAR IS A FAR CRY FROM THE PREDICTIONS IN THE FISCAL NOTE OR THE CURRENT COST OF RUNNING OUR PRESENT SYSTEM.

RESPECTFULLY SUBMITTED,

LEE MOEGLEIN
EVERGREEN MEMORIAL CHAPEL, INC.
737 E ST.
ANCHORAGE, AK. 99501 279-5477

3-17-78

PRESENT COST PER YEAR FOR DELIVERY SYSTEM, AUTOPSY FACILITY, AND AUTOPSY PERFORMANCE (INCLUDING LABORATORY TOXICOLOGY AND HISTOLOGY SERVICES) **

DELIVERY TO AUTOPSY FACILITY (600 TRIPS @ $20)	$12,000.00
DELIVERY TO AIRPORT (300 TRIPS @ $20)	6,000.00
FACILITY FEE (INCLUDING ASSISTANCE, EQUIPMENT, INSTRUMENTS, AND CLEAN UP)(600 @ $50)	30,000.00
PATHOLOGY SERVICES (INCLUDES ANATOMICAL EXAMINATION TOXICOLOGY AND HISTOLOGY SERVICES)	144,000.00
LEGAL TESTIMONY AND CONSULTING	7,500.00
TOTAL COST	$199,500.00

** DELIVERY AND FACILITY COSTS BASED ON OUR EXPERIENCE WITH PROVIDING THEM. ANATOMICAL PATHOLOGY, TOXICOLOGY, HISTOLOGY, TESTIMONY AND CONSULTING FEES BASED ON FIGURES FROM DR. MICHAEL T. PROPST, M.D., FORENSIC PATHOLOGIST. TOTAL CASE VOLUME ESTIMATES FROM MRS. DOLORES WILKS, CORONER/PUBLIC ADMINISTRATOR--ANCHORAGE.

PROJECTED COST PER YEAR FOR DELIVERY SYSTEM, AUTOPSY FACILITY, AND AUTOPSY PERFORMANCE (INCLUDING TOXICOLOGY AND HISTOLOGY) WHEN THESE SERVICES ARE CONTRACTED OUT UNDER HB 392 **

DELIVERY TO FACILITY ONE WAY (600 TRIPS @ $120)	$72,000.00
DELIVERY OF CASES TO MORTUARIES FOR RETURN TO LOCALITY OF DEATH AFTER EMBALMING (300 TRIPS @ $120)	36,000.00
TRANSFER OF REMAINS TO AIRPORT FROM MORTUARY (300 @ $120)	36,000.00
RETURN OF 300 SHIPPING CASES TO AIRPORT (BY DOUBLING UP, 150 TRIPS INSTEAD OF 300 @ $120)	18,000.00
ROUTINE TOXICOLOGY (600 CASES @ $79 PER CASE)	47,400.00
ADDITIONAL TOXICOLOGY(600 @ AVERAGE $10 PER CASE)	6,000.00
HISTOLOGY SERVICE (PREPARE SLIDES) (600 @ $15)	9,000.00
CHIEF MEDICAL EXAMINER (300 AUTOPSIES)	65,000.00
CONTRACT PROFESSIONAL SERVICES (300 AUTOPSIES @ $200)	60,000.00
MEDICAL RECORDS ASSISTANTS (2 @ $17,700.00)	35,400.00
MORGUE ATTENDANT (DIENER-24 HR. COVERAGE)	20,000.00
STATE FRINGE BENEFITS FOR PERSONNEL (20%)	36,080.00
COMMISSION TRAVEL	5,000.00
MEDICAL EXAMINER TRAVEL	6,000.00
ASSOCIATE AND ASSISTANT MEDICAL EXAMINER TRAVEL	15,000.00
3,000 SQ. FT. AUTOPSY FACILITY	54,000.00
PRINTING COSTS	10,000.00
TELEPHONE	3,600.00
OFFICE SUPPLIES	1,200.00
AUTOMOBILE LEASE	3,000.00
GAS, OIL, ETC.	1,200.00
MAG CARD 11 TYP(TYPEWRITER WITH A MEMORY)	3,600.00
TOTAL COST*	$543,480.00

** THESE FIGURES DO NOT INCLUDE THE COST OF SETTING UP ASSISTA NT MEDICAL EXAMINER OFFICES THROUGHOUT THE STATE. WE HAVE NO WAY OF EVEN ESTIMATING HOW MUCH THAT MIGHT COST. WE ALSO HAVE NOT INCLUDED THE COST OF EQUIPMENT SUCH AS REGULAR TYPEWRITERS, PHOTOGRAPHIC MICROSCOPES, X-RAY, FLUROSCOPY, INSTRUMENTS, TWO WAY RADIO, DICTATION EQUIPMENT, TABLES, SHIPPING CASES FOR HUMAN REMAINS, OR THE REPLACMENT COST OR SERVICE COSTS OF THESE ITEMS. ALSO, WE DID NOT INCLUDE STATE ADMINISTRATIVE COSTS FOR BOOKEEPING, ACCOUTING, LEGAL FEES, ETC. WHICH COULD RUN AS MUCH AS 15% OF THE ENTIRE COST OF THE OPERATION. WE ALSO DID NOT INCLUDE THE $180,000.00 THE COURT SYSTEM PLANS TO KEEP FOR "ONGOING PROGRAMS IN STATEWIDE LOCATIONS".

COST FIGURES COURTESY OF OUR OWN UNDERSTANDING OF THE DELIVERY SYSTEM, LOOMIS SECURITY ESTIMATES, MUNICIPALITY OF ANCHORAGE ESTIMATES, DR. MICHAEL T. PROPST, M.D., VOLUME FIGURES COURTESY OF THE ALASKA COURT SYSTEM. OTHER ITEMS FROM THE FISCAL NOTE. SOME ITEMS FROM THE FISCAL NOTE NOT INCLUDED BECAUSE THEY ARE FRILLS OR EXTRAVAGENT AND UNNECESSARY.

PROJECTED COST PER YEAR FOR THE DEPARTMENT OF PUBLIC SAFETY TO SET UP ITS OWN LABORATORY AND DO ITS OWN TOXICOLOGY, HISTOLOGY, AND DELIVERY.

DELIVERY SYSTEM		
TWO MEN PER SHIFT, THREE SHIFTS PER DAY, SEVEN DAYS PER WEEK, 365 DAYS PER YEAR. INCLUDING OVERTIME AND FRINGE BENEFITS. TWO VEHICLES WITH MINIMUM EQUIPMENT, GAS, OIL, INSURANCE, MAINTENANCE COSTS. (A)		$200,000.00
PERSONNEL		
CHIEF MEDICAL EXAMINER		65,000.00
ASSOCIATE MEDICAL EXAMINER		55,000.00
TWO MEDICAL RECORDS ASSISTANTS		35,400.00
SECRETARY-RECEPTIONIST		15,000.00
DIENER (AUTOPSY ASSISTANCE-DAYTIME HOURS)		15,000.00
MEDICAL TECHNOLOGIST OR CHEMIST WITH DEGREE & EXPERIENCE		25,000.00
HISTOLOGY TECHNOLOGIST		20,000.00
PERSONNEL FRINGE BENEFITS (20%)		46,080.00
TRAVEL		
COMMISSION		5,000.00
MEDICAL EXAMINER		6,000.00
ASSOCIATE AND ASSISTANT MEDICAL EXAMINER		15,000.00
FACILITY		
LEASE- 3,000 SQ. FT.		54,000.00
TELEPHONE		3,600.00
ELECTRICITY AND REFUSE (COMMERCIAL RATE)		1,980.00
OTHER		
CHIEF MEDICAL EXAMINER AUTO		3,000.00
ASSOCIATE MEDICAL EXAMINER AUTO		3,000.00
GAS AND OIL		2,400.00
OFFICE SUPPLIES		1,200.00
PRINTING		10,000.00
REAGENTS AND EXPENDABLES	(TOXICOLOGY)	25,000.00
	(HISTOLOGY)	10,000.00
TOTAL*		$616,660.00

*COMMENT- THESE FIGURES DO NOT INCLUDE THE COST OF SETTING UP ASSISTANT MEDICAL EXAMINERS OFFICES THROUGHOUT THE STATE. THEY DO NOT INCLUDE INFLATION, THE EQUIPMENT NECESSARY TO SET UP A LABORATORY OR AUTOPSY FACILITY, (SUCH AS PHOTOGRAPHIC MICROSCOPES, X-RAY FACILITIES, FLUROSCOPY, INSTRUMENTS, TWO WAY RADIO, DICTATION EQUIPMENT, TWO WAY RADIO, TABLES, SHIPPING CONTAINERS FOR TRANSPORTING REMAINS, OR THE REPLACEMENT OR SERVICE COSTS ON THESE ITEMS. ALSO, WE DID NOT INCLUDE STATE ADMINISTRATIVE COSTS WHICH COULD EASILY RUN AS HIGH AS 15% OF THE COST OF THE ENTIRE OPERATION. WE ALSO DID NOT INCLUDE THE $180,000 THE COURT SYSTEM PLANS TO KEEP FOR "ONGOING PROGRAMS IN STATEWIDE LOCATIONS".

(A) A STUDY CONDUCTED SEVERAL YEARS AGO BY DR. DONALD ROGERS, M.D. INDICATED IT WOULD COST UPWARDS OF $250,000 PER YEAR FOR THIS SERVICE.

IN ADDITION TO OUR DESIRE TO SEE THIS BILL DEFEATED, THERE ARE A FEW SUGGESTIONS WHICH MIGHT BE IN ORDER TO IMPROVE THE CURRENT SYSTEM.

A. THE ALASKA COURT SYSTEM CURRENTLY SETS NO STANDARDS FOR THE FACILITIES OR EQUIPMENT USED IN PERFORMING THESE AUTOPSIES. STANDARDS SUCH AS SIZE OF FACILITY, TYPE OF CONSTRUCTION, LIGHTING REQUIREMENTS, VENTILATION, KINDS OF EQUIPMENT, ETC. IF THERE IS A PROBLEM IN REGARD TO THE ADEQUECY OF FACILITIES, IT COULD EASILY BE RECTIFIED.

B. REQUEST THAT THE CURRENT CORONERS BE ALLOWED TO RUN THEIR OFFICES WITHOUT CONSTANT INTERFERENCE FROM COURT SYSTEM ADMINISTRATORS.

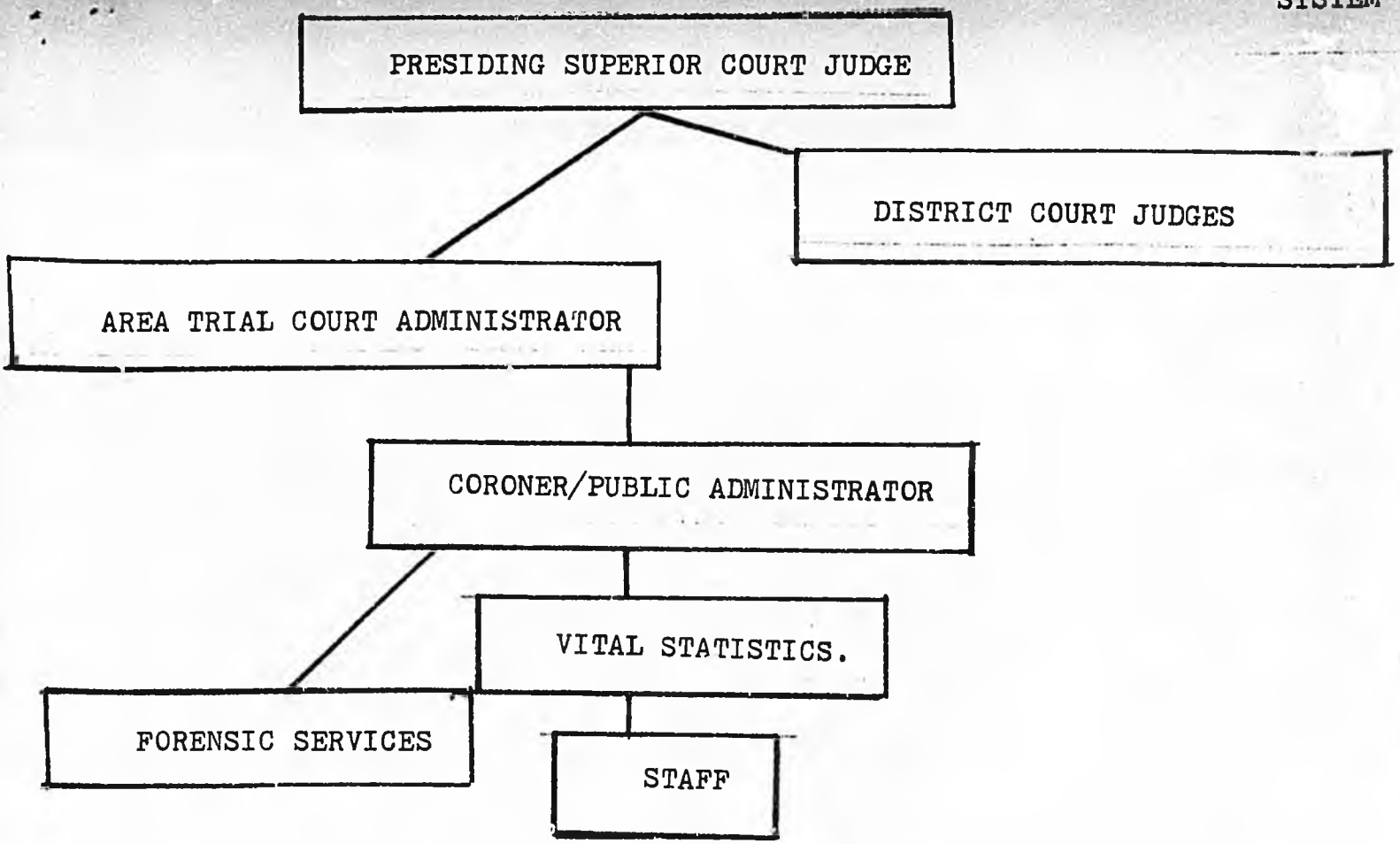
C. PROVIDE THE CORONERS WITH ADEQUATE FUNDING TO DO THEIR JOB.

THANK YOU FOR YOUR ATTENTION.

RESPECTFULLY,

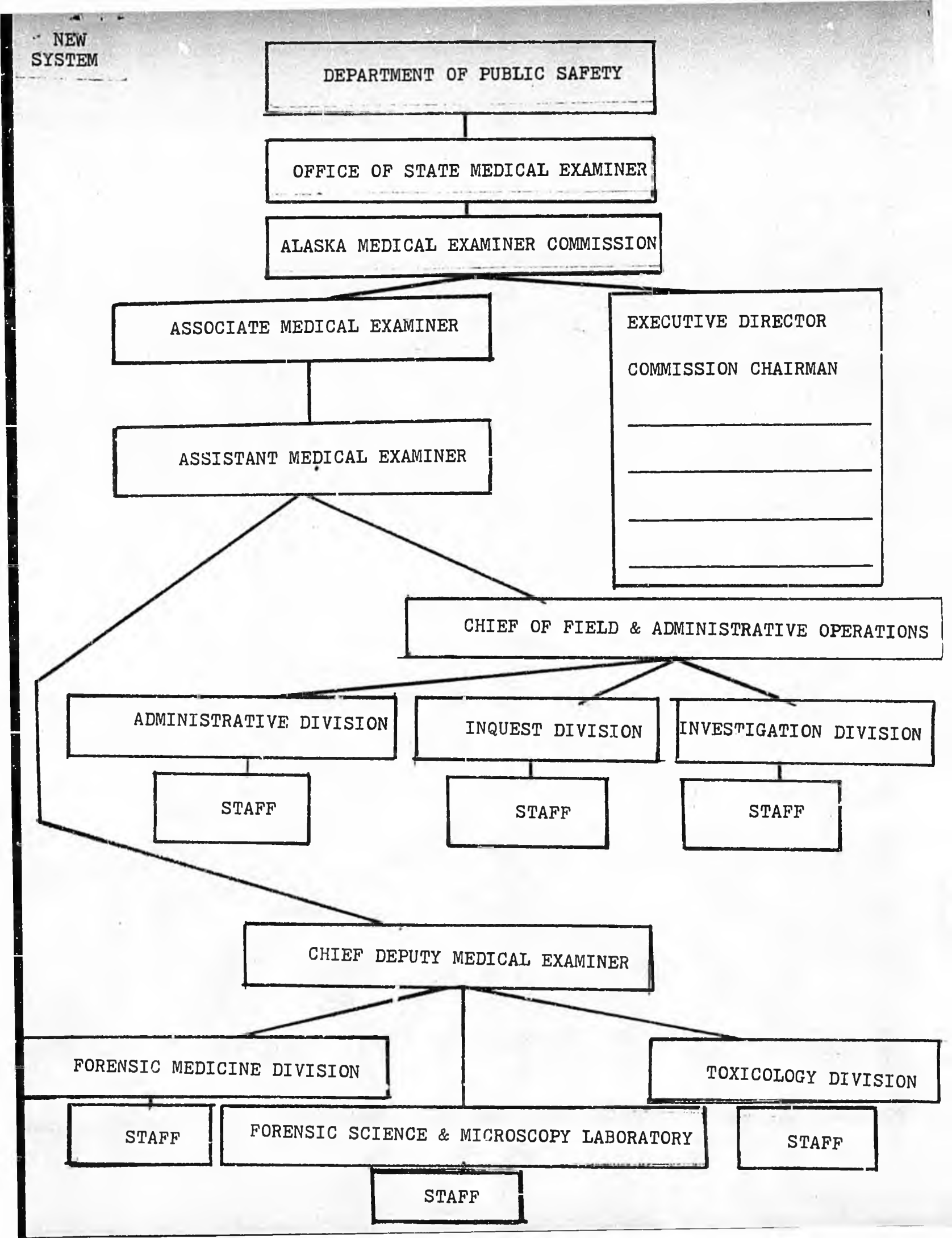
LEE MOEGLEIN

HB 392 PRESENT SYSTEM



LEE MOEGLEIN
725 West 46th
Anchorage, AK. 99501 272-3690
EVERGREEN 279-5477 office

NEW SYSTEM


DEPARTMENT OF PUBLIC SAFETY
OFFICE OF STATE MEDICAL EXAMINER
ALASKA MEDICAL EXAMINER COMMISSION
ASSOCIATE MEDICAL EXAMINER
ASSISTANT MEDICAL EXAMINER
EXECUTIVE DIRECTOR
COMMISSION CHAIRMAN
CHIEF OF FIELD & ADMINISTRATIVE OPERATIONS
ADMINISTRATIVE DIVISION
INQUEST DIVISION
INVESTIGATION DIVISION
STAFF
STAFF
STAFF
CHIEF DEPUTY MEDICAL EXAMINER
FORENSIC MEDICINE DIVISION
TOXICOLOGY DIVISION
STAFF
FORENSIC SCIENCE & MICROSCOPY LABORATORY
STAFF
STAFF

(Critique of fiscal note

Senate Bill 285

Summary and Analysis

Currently, Alaska's death investigation system consists of coroners and medical examiners. District judges and magistrates are required to serve as ex officio coroners and perform the duties and exercise the authority of that office. When authorized by the supreme court the judge in each judicial district is required to appoint a person to act as public administrator of the estates of deceased persons and as coroner.

SB 285 will establish a commission, which will appoint a state medical examiner, who will appoint associate and assistant medical examiner, who will replace coroners.

The biggest problem with this bill is financial. Among the powers granted to SME is "to approve and provide for laboratories."

It appears that the fiscal note does not reflect many costs as follows:

Present System	FY79	Critics Analysis
Chief Medical Examiner	64.7	1. Fails to account for $200,000 delivery, Fails to reflect associate medical examiner, secretary-receptionist, diener, medical technologist or chemist, or histology technologist. Fails to include personnel fringe benefit
Medical Records Asst	17.7	
" " "	17.7	
Commission Travel	5.0	
SME Travel	6.0	
Associate & Assistant Medical Examiners Travel	15.0	Doesn't reflect cost of associate medical examiner or assistant medical examiner's autos, radios operation and expenses.
Rental of Autopsy Space	54.0	
Printing	10.0	
Mag Card & AJIS Terminal	7.2	Does not include costs of setting up assistant medical examiners offices.
Commodities	1.2	
Photographic Microscope	10.0	Does not include setting up laboratory, autopsy facility.
Car, radio, furniture, file cabinets, dictation, instruments.	17.3	Does not reflect cost of administration.
	(228.0)	Anticipates $1,000.0 plus
600 autopsies $350 @ =210,000		2. No transportation of body from remote sites; none from place of death. No X-ray equipment or technicians; no autopsy assistants; no histologist; no slide preparation equipment; no toxicolgy lab; no replacement costs for cars, radio etc.

1. Lee Moeglein, Evergreen Memorial Chapel
2. Dr. M. Propst M.D. and Dr. R. Rogers M.D. (both are currently doing autopsies)

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION:

POUCH V
JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-4948

SUITE 203
207 EAST NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99503
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE
DISTRICT 7, ANCHORAGE

MEMBER OF:
FIFTH STATE LEGISLATURE
NINTH STATE LEGISLATURE
TENTH STATE LEGISLATURE

COMMITTEES:
HEALTH
EDUCATION AND
SOCIAL SERVICES
FINANCE SUB-COMMITTEE
ON TRANSPORTATION

March 21, 1978

The Honorable Joseph Orsini
Alaska State Senate
Pouch V, Mail Stop 3100
Assembly Building, Room 100
Juneau, AK 99811

Re: Senate Bill 285

Dear Senator Orsini:

I concur with the observations of the Anchorage doctors on this bill and believe it would be a mistake for the State to involve itself in this business at this time.

Very truly yours,

Mike Beirne

Dr. Mike Beirne
State Representative

MFB:jss

HB 392

Contact:

Alaska Clinic → Donald Rogers, M.D.
276-2131
276-1131
OK

Art Snowden
Susan Burke

Lee Moeglein < 272-3690
279-5477-ofc > Baranof

Alaska Medical Lab
Dr. Matthews > 349-4506

prom to turn lab morgue free to state
no way - cost sev'l hund thou/yr
court says contracted anyway
went

HR 31

level of fical sophistication
fiscal note shows just same

Oil Spill regs

Bob - see me
Brooke

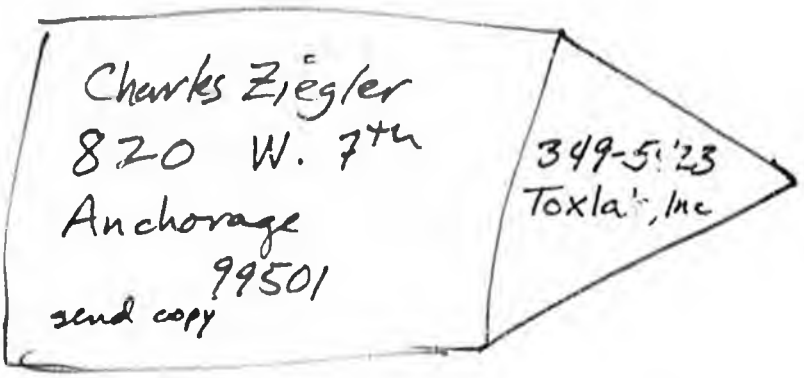
MIZERA

talked to Dr. Ray
current King Coun
ME - says state
med exam
70-75 grand
+ need 2 AA
@ about 30 gr.
HB 392 FISCAL NOTE

Chuck Ziegler
Toxicology Lab

Tox Lab, Inc.

Very sophisticated lab worth up to $80,000
much of work is clinical
check for most drugs using
state-of-art methods
best one in state



Linda - please send copy of HB 392
to Ziegler at the above
address with short cover letter.
(Just a few lines)
- Then return this note for me
to file with the bill.

HB 392

Contact Lee.
Moeglein
w/ Evergreen Memorial
Chapel in Anch.
737 "E" St.
Anch. 99501

COMMENTS CONCERNING HB392/SB 285

The above costs were prepared with the advice of the Court System and a Pathologist.

Currently, the Court System has a budget of 225.0 for autopsies, statewide. We are projecting that the medical examiners office expenditures for FY 79 will be $212.1. Establishment of the office will reduce the need for funds currently expended by the Court System by $45.0 and this amount can be applied to funding the Office of Medical Examiner.

The balance of the Court System's current allocation of $225.0 will be required for maintaining the ongoing program in statewide locations remote from the State Medical Examiner's office.

Revised Fiscal Note

4/25/77

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 392/SB 285
Title relating to inquiries into death; establishing a state medical examiner
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES		42.0	100.1	105.0		
200 TRAVEL		5.0	26.0	28.0		
300 CONTRACTUAL		16.3	74.8	82.0		
400 COMMODITIES		.6	1.2	1.2		
500 EQUIPMENT		27.3	10.0	10.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		91.2	212.1	226.2		

FUNDING (Thousands of Dollars)

GENERAL FUND		91.2	167.1	181.2		
FEDERAL FUNDS						
OTHER (Specify) OTHER FUNDING			45.0	45.0		

POSITIONS

FULL TIME		2	3	3		
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See Attached

IV. DATE Revised 4/25/77

PREPARED BY Trygve R. Hermann, Director
AGENCY PUBLIC SAFETY/Div. of Administrative Services
PHONE 465-4350

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
Alaska Court System

33-001 (Rev. 10/76)

HB 392
FISCAL NOTE DETAIL

Catagory		FY 78	FY 79	FY 80
100	Chief Medical Examiner	32.3	64.7	64.7
	Med. Records Assistant	8.8	17.7	17.7
	Med. Records Assistant	.9	17.7	17.7
	Inflation			4.9
	Total	42.0	100.1	105.0
200	Commission Travel	5.0	5.0	5.0
	Chief Medical Examiner		6.0	6.0
	Assoc. & Assistant Examiner		15.0	15.0
	Inflation			2.0
	Total	5.0	26.0	28.0
300	Rental of 3,000 Sq. Ft. Autopsy			
	Work space inc. cooler & freezer	9.0	54.0	54.0
	Remoldeling for Anch. Headquarters	5.0		
	Printing Costs (forms & proceedures)		10.0	10.0
	Telephone	.5	3.6	3.6
	Mag Card II Typ	1.8	3.6	3.6
	AJIS Terminal		3.6	3.6
	Inflation - Other			7.2
	Total	16.3	74.8	82.0
400	Commodities (office supplies)	.6	1.2	1.2
500	Photographic Microscope	10.0		
	Typewriter	.8		
	Furniture	2.0		
	File Cabinets (Fire proof)	2.0	1.0	
	Photo Equip.	3.5	1.0	
	Instruments	1.0		
	HWCF Car Purchase	5.0		
	Radio	2.0		
	Dictation Equipment	1.0		
	Other - Unspecified		8.0	10.0
	Total	27.3	10.0	10.0

HB
396

STATE OF ALASKA
ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

610 C STREET, SUITE 209
ANCHORAGE, ALASKA 99501
PHONE: 276-4176 AND 274-0321

JUNEAU BRANCH OFFICE:
POUCH AO
JUNEAU, ALASKA 99811
PHONE: 465-4864

April 13, 1978

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

On behalf of the Alaska Public Offices Commission, I wish to submit additional recommendations to CSHB 396, along with the Commission's rationale for these proposals.

There are three areas of the committee substitute which the Commission feels need further consideration:

1. Sec. 11 AS 24.45.161

In the original draft prepared in conjunction with House State Affairs, the Commission recommended that 161(A)(1)(B) be deleted. If this language is allowed to remain, the effect would be as follows: An individual (private citizen) would be exempt from registering and reporting as a lobbyist only if they met the criteria listed below:

A. Have received no compensation, whatsoever, for attempts made to influence legislative or administrative action;
B. Have made no disbursements or expenditures in excess of ~~$100~~ $250 in the aggregate a year for, or on behalf of, a public official, or on behalf of a member of the immediate family of a public official; and
C. Limit their lobbying activities to appearances before legislative or administrative hearings.

As you may well surmise, the inclusion of 161(A)(1)(B) could be interpreted to mean that individuals would not be allowed to address public officials outside of public hearings. This appears incongruent with the recommended change in 161(A)(1)(A), which in no way curtails open access to public officials and asks for

disclosure only if the individual spends in excess of $100 in the aggregate a year for, or on behalf of, a public official or a member of his family.

The Commission, as always, in its attempts to administer this law, has taken great pains to avoid language which would create conflict with an individual's rights provided by the First Amendment of the Constitution of the United States. If this language is allowed to remain, they feel such conflicts would occur.

Therefore, the Commission recommends that AS 24.45.161 be amended as follows:

(1) an individual [A] who lobbies without receipt of payment, [OF] compensation or any economic [OTHER] consideration and makes no disbursement or expenditure in excess of $100 in the aggregate a year for or on behalf of a public official, or member of the immediate family of a public official, to influence legislative or administrative action.[OTHER THAN TO PAY HIS REASONABLE PERSONAL TRAVEL AND LIVING EXPENSES: AND (B) WHO LIMITS HIS LOBBYING ACTIVITIES TO APPEARANCES BEFORE PUBLIC SESSIONS OF THE LEGISLATURE, OR ITS SOMMITTEES OR SUBCOMMITTEES, OR TO PUBLIC HEARINGS OR OTHER PUBLIC PROCEEDINGS OF STATE AGENCIES;]

2. Sec. 15 .AS 24.45.171(1)

As presently written, the definition of "administrative action" is unclear. During the 1977 session, the Commission recommended to the Legislature a suspension be imposed on the adminsitrative portion of the law. They felt changes focusing particularly on clearly defining "administrative action" and narrowing the scope of its applicability should be developed. No action was taken by the Legislature in 1977. Therefore, in September of that year the Commission made the following decision:

> It is the decision of the Alaska Public Offices Commission to take no further action in its attempt to administer the administrative lobbying portion of AS 24.45, the regulation of lobbying law, until such time as the law is changed or amended by the Legislature in such a manner as to serve the public interest in a meaningful and realistically workable manner.

The Commission feels the proposed changes in CSHB 396 would make the definition meaningful, realistic and workable for the general public. Howev , they also feel that further limitation should be included to insure that abuses of this type of lobbying do not occur. Therefore, the Commission recommends AS 24.45.171(1) be amended as follows:

(1) "Administrative action" means a decision made or action taken by a public official or a state agency; "administrative action" does not include: [A PROCEEDING]

(A) proceeding or action to determine the rights or duties of a person under existing laws, regulations or policies;

(B) proceeding involving the issuance, amendment or revocation of a permit, license or other entitlement for use;

(C) proceeding or action to enforce compliance with existing law or to impose sanctions for violations of existing law;

(D) proceeding at which an action is taken involving the policy, purchase or sale of property, goods or services by the agencies.

(E) [AT WHICH AN ACTION IS TAKEN WHICH IS MINISTERIAL IN NATURE]

(F) proceeding at which an action is taken awarding a grant or contract;

(G) proceeding or action involving the issuance of a legal opinion.

Subsections (A), (C) & (G) are decisions of a legal nature. Action taken by an administrative agency cannot be easily influenced due to the scope of existing laws regulations and policies.

Subsections (B), (D) & (F) are issues which involve the awarding of contracts, grants, sale of property, permits and licenses to the public. Although these decisions are, in fact, bound by certain criteria, the Commission feels that any attempts to influence this type of action, unless the individual chooses to register, should be limited to proceedings where all records are

part of public documents.

Subsection (E) has beer deleted due to vagueness and the broad scope which it covers. The phrase "ministerial in nature" would only lead to the development of further definitions. Also, the amendment offered in 171(6) covers what are to be considered simple inquiries and routine actions.

3. Sec. 23

The final change which the Commission would recommend in CSHB 396 concerns the "effective date." The Commission respectfully requests the effective date of these amendments be advanced until January 1, 1979. The reason for this request is twofold. First, if CSHB 396 passes in its entirety, this will require the development of new forms and manuals for both the lobbyiest and the employers. The staff of the APOC would appreciate a January 1, 1979 effective date so they may be assured their work is serving the public interest in the most effective manner possible.

As you are aware, 1978 is an election year. With forty House seats, 10 Senate seats, as well as the approaching Gubernatorial race, both the Anchorage office and the Juneau Branch Office will have full work loads at the end of this session.

Secondly, lobbyists and employers are required to register annually. To impose new requirements during the middle of a calendar year would only cause confusion for those that are now registered and reporting.

We would like to take this opportunity to thank you for your time and consideration not only in the committee hearing, but also in reviewing these additional recommendations. The Commission, in its attempts over the past two years, has put much thought and energy into what they feel can be a realistic lobbying law. CSHB 396, along with the above changes can accomplish just that: a law which is not burdensome to those that fall within its scope and yet still provides the public with the information they have the right to know.

I would also like to apologize for not having this information available for you at the time of the hearing. However, our office was not notified in advance that this bill was to be considered on that day. We were made aware of the hearing late Monday, leaving very little time for preparation.

Once again, thank you for your time. If you should require additional information, please contact me in the Juneau office or feel free to call Randall Burns, Executive Director, in the Anchorage Central Office.

Respectfully submitted,

ALASKA PUBLIC OFFICES COMMISSION

Randall P. Burns
Executive Director

Nancy M. Carlson

BY: Nancy M. Carlson
Administrative Assistant
Juneau Branch Office

cc: All Commission Members
APOC Anchorage Office

NCC:baw

ALASKA OIL AND GAS ASSOCIATION
505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503
Area 907 272-1481

April 26, 1978

Representative Terry Gardiner, Chairman
Judiciary Committee
House of Representatives
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Subject: 1978 Alaska Legislation
CSHB 396 (Lobbying

Dear Representative Gardiner:

Although the narrowing of the definition of "administrative action" found in Sec. 15 of this bill (which excludes ministerial and other described proceedings) is highly desirable AOGA is opposed to the bill in its present 4/3/78 form and urges that strong effort be made to amend Sec. 18 of the bill to read as follows in order to avoid inadvertent violation by employees having infrequent or trivial lobbying contacts with State agencies:

" * Sec. 18. AS 24.45.171(8) is amended to read:

(8) "lobbyist" means /(A)/ a person who is employed and receives direct or indirect payments, or who contracts for economic consideration, including reimbursement for /REASONABLE TRAVEL AND LIVING/ expenses, or makes disbursements or expenditures for or on behalf of a public official, or a member of the immediate family of a public official, to communicate directly or through his agent with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action; unless otherwise exempt under sec. 161 of this chapter; /OR (B) A PERSON WHO REPRESENTS HIMSELF AS ENGAGING IN THE INFLUENCING OF LEGISLATIVE OR ADMINISTRATIVE ACTION AS A BUSINESS, OCCUPATION OR PROFESSION;/"

This assumes, of course, that reasonable regulations will be adopted defining "substantial or regular."

In order to eliminate registration and reporting for those whose only lobbying activities are limited to appearances before or

submissions to public sessions, hearings or other public proceedings, Sec. 11 of this bill should be amended to read as follows:

" * Sec. 11 AS 24.45.161(a)(1) is amended to read:

(1) an individual (A) who lobbies without receipt of payment, /OF/ compensation or any economic /OTHER/ consideration and makes no disbursement or expenditure in excess of $100 in the aggregate a year for or on behalf of a public official, or a member of the immediate family of a public official, to influence legislative or administrative action /OTHER THAN TO PAY HIS REASONABLE PERSONAL TRAVEL AND LIVING EXPENSES/; or /AND/ (B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies or to the preparation or submission of written statements for incorporation in the record of such public sessions, hearings or other public proceedings."

This latter change is consistent with the disclosure purpose of a lobbying law because the public has access to such public proceedings.

Very truly yours,

Keith Arnold
Public Affairs Manager

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

TESTIMONY GIVEN BY
JIM ROLLE
FOR
THE ALASKA MUNICIPAL LEAGUE

BEFORE
HOUSE JUDICIARY
CSHB 396

APRIL 11, 1978

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

Mr. Chairman:

Our concern with CSHB 396 is on page 11, section 22. We note that 24.45.161 (a)(2) is repealed.

Mr. Chairman, Alaska statutes define a lobbyist as a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses to communicate directly with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action, or a person who represents himself as engaging in the influencing of legislative or administrative action as a business, occupation or profession.

The section which is to be repealed is an exemption for an elected or appointed state or municipal official, or an employee of the state or a municipality acting in his or her official capacity or within the scope of his or her employment.

Mr. Chairman, in the case of our municipal officials coming to the Capital, or speaking to the administration in their own area, it is to the benefit of the state. Many of the actions taken by the legislature and the administration directly effect municipal government and it would be the state's loss for an official to be reluctant to speak because he or she was not registered. On the other hand, we feel it would be absurd for 1500 or 2000 local officials to register and report.

We look back at the statute's definition of a lobbyist and we feel that none of our members fit that description.

Mr. Chairman, we would like to have 24.45.161 (a)(2) remain in the Act.

Thank You.

amendment #1

Introduced: 3/17/78
Referred: State Affairs and Judiciary

IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE BY REQUEST

HOUSE BILL NO. 895

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to lobbying; and providing for an effective date."

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

* Section 1. AS 24.45 is amended by adding new sections to read:

Sec. 24.45.200. PROHIBITIONS AND PENALTIES. (a) No lobbyist may offer a gift to a public official or employee in connection with an attempt to influence legislative or administrative action.

(b) No public official or employee may accept a gift from a lobbyist in connection with an attempt to influence legislative or administrative action.

(c) A person who knowingly violates a provision of this section is, upon conviction, punishable by a fine of not more than $5,000 or by imprisonment for not more than one year, or by both.

Sec. 24.45.210. REGISTRATION OF LOBBYISTS. (a) A lobbyist shall register before engaging in lobbying. A registration is effective for the remainder of the calendar year; if the information as to the identity of the person for whom the lobbyist is employed or retained or the person who will benefit from the lobbying changes, a new registration is required within 10 days of the change.

(b) No charge or fee may be collected in connection with a registration under this section.

(c) The commission shall prescribe the form for registration under this section to include the following information:

(1) the lobbyist's full name, permanent business address, and

any temporary business address;

(2) the name and address of each person by whom the lobbyist is employed or retained and the person who will benefit from the lobbying, if different;

(3) a description of the subjects or matters on which the lobbyist expects to attempt to influence legislative or administrative action;

(4) the expected compensation or reimbursement for expenses for lobbying.

(d) A person who ceases to lobby before the end of the calendar year shall file a statement with the commission advising when his services terminated.

(e) A person who fails to register within the time required by this section is subject to a civil penalty of not more than $10 for each day the delinquency continues as determined by the commission. The determination of the commission is subject to a right of appeal to the superior court; a person subject to the civil penalty may submit facts in mitigation of the penalty. Imposition of penalties does not excuse a failure to register.

(f) The commission shall publish a report 45 days after the end of each quarter containing the information reported under this section.

Sec. 24.45.220. REPORT BY LOBBYISTS. (a) A lobbyist who receives no compensation or reimbursement for expenses for lobbying need file no reports under this section and sec. 210(c)(4) of this chapter.

(b) A lobbyist who receives or earns compensation or reimbursement for expenses for work as a lobbyist during any calendar quarter shall report the amounts to the commission within 15 days after the end of the calendar quarter in which the compensation or reimbursement for expenses is received or earned.

Sec. 24.45.230. REGULATIONS. The commission may adopt regulations to implement secs. 200 - 250 of this chapter.

Sec. 24.45.240. DEFINITIONS. In secs. 200 - 250 of this chapter

(1) "an attempt to influence administrative action" means efforts by the lobbyist concerned with the approval, disapproval, modification, or postponement by a state agency of state action;

(2) "an attempt to influence legislative action" means efforts by the lobbyist concerned with the approval, disapproval, modification, or postponement by the legislature, a committee of the legislature, or a legislator of a bill, resolution, or other legislative action;

(3) "agency" means a state department, commission, board or other entity, including the University of Alaska, in the executive branch;

(4) "commission" means the Public Offices Commission;

(5) "gift" means an act or forbearance for which equal or greater value is not received in return; "gift" does not mean food or beverages actually and promptly consumed in places of public or private accommodation;

(6) "lobbyist" means a person who seeks to influence legislative or administrative action which will benefit another person; "lobbyist" does not include a person whose attempt to influence legislative or administrative action

(A) will benefit only himself or members of his immediate family;

(B) is limited to appearances before public sessions of the legislature, its committees or subcommittees, or to public hearings or public proceedings of state agencies;

(C) occurs within the scope of his responsibilities as

an elected or appointed state or municipal officer;

(D) results from an invitation to testify from the legislature or an administrative agency;

(E) is limited to representations by attorneys on behalf of clients before executive agencies; or

(F) involves contact between an elected officer of the state and a constituent on the responsibilities of the elected officer;

(7) "person" includes a labor union in addition to the terms set out in AS 01.10.060(7);

(8) "public official or employee" means a public official as defined in AS 39.50.200(1) or an employee of the executive or legislative branch of the state government; it does not include a judicial officer or employee or an elected or appointed municipal officer or employee.

Sec. 24.45.250. CAMPAIGN CONTRIBUTIONS. Nothing in secs. 200 - 250 of this chapter prohibits contributions which comply with the requirements of AS 15.13.

* Sec. 2. AS 24.45.011 - 24.45.181 are repealed.

* Sec. 3. This Act takes effect July 1, 1978.

HB
398

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

March 17, 1977

SUBJECT: Analysis of recommendations of the Salary Commission (W.O. #3646)

TO: Representative Terry Gardiner, Chairman
House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

In a separate memorandum dated March 14, 1977, I addressed the relationship between the responsibilities of the salary commission and the response of the legislature. In this memorandum, I will seek to comment on problem areas in the Commission's recommendations. At the conclusion of this memorandum, I offer a brief summary of my recommendations as to each separate recommendation.

Initially, I note that the format of the "Final Report" of the commission is in two main sections, containing respectively its "Recommendations" and appendices. Appendix I contains "amplifications" on the "Recommendations" and Appendix II contains "General Philosophical Views of the Commission's Responsibilities." While I have reviewed the Appendices and may comment on what is contained in them, in my opinion, only the "Recommendations" are before the Legislature. AS 39.23.080.

While I have no desire particularly to offer a counterpart set of "philosophical views." I should advise you that in my view Ch. 263, SLA 1976, of which AS 39.23 is a part, grants the Commission the authority to make recommendations as to compensation and retirement benefits of certain public officers. It is similarly my view that efforts by the Commission to manipulate its agreed upon responsibilities to achieve other goals viewed by it as worthwhile are extraneous to the Commission's responsibilities, classically ultra vires, and may generally be disregarded by the legislature.

Parenthetically I note that the delegation of authority from the legislature to the Commission fails to instruct the Commission on what factors were to be considered in setting salaries. Neither the customary cost-of-living concepts nor comparability factors (AS 39.27.030, as enacted by ch. 42, SLA 1971) nor longevity (which may have more value for merit system employees than for elected officers) are specified in AS 39.23 and the commission's structure of "longevity" is flatly contrary to accepted concepts of cost of living adjustments. Notwithstanding inflation, it appears that the governor's salary (and others') is to be frozen and adjusted only as a governor continues in office. See Appendix I, ¶1.

My analysis will follow the order in which the commission made its recommendations.

(1) Governor.

No legal or constitutional problems with the salary recommendation. It does not violate Art. III, §15 of the State Constitution. The governor currently receives $50,000 per annum. AS 39.20.010. The commission recommends that he be paid $52,992 per annum.

The commission recommends that the governor "remain" in the retirement system. While the incumbent governor (and lieutenant governor) have elected to join the retirement system, under AS 39.35.125 their coverage is their individual option.

In the Commission's Appendix I, I note that the Commission proposes to give "longevity" pay increases to "incumbent governors" for every two years of service accrual. Whatever the policy justification for that proposal, the question of longevity raises for the governor or lieutenant governor is not before the legislature at this time.

(2) Lieutenant Governor.

No legal or constitutional problems are presented by the Commission's recommendations. It recommends $47,304 per annum. The lieutenant governor currently receives $44,000 per annum. AS 39.20.030.

As to retirement, and to "longevity" increases, note my comments relative to the governor.

(3) Department Commissioners.

The Commission recommends that departmental commissioners receive $47,304 annually. Commissioners currently receive $40,000. The recommendation presents no legal or constitutional problems; I note that the proposed salary is identical to that proposed for the lieutenant governor.

Departmental commissioners are in the retirement system and it is proposed that they remain there.

Longevity increases are proposed. New appointees apparently will be compensated at the initial level. My earlier comments to the effect that "longevity" apparently ignores cost-of-living factors are appropriate here also.

(4) Deputy Commissioners.

The commission recommends that deputies receive their present entry salary of $42,372. The present statutory steps for increases (at 39.20.080(b)) is superseded by discretionary longevity increases of 3.75% for each two years of continuous service.

No legal or constitutional problems are created. The existence of deputies in the retirement system is continued.

(5) Directors.

The commission recommended "no change in the salary level of directors." Since there is neither statutory nor regulatory authority for existing levels, it is unclear what is not to be changed; the existing procedure has the level set by the classification of the individual position. The generally understood level for directors of executive line agencies is at Range 26, but not all directors are at that range and it is possible that agencies are working at reclassification subsequent to the Commission's recommendations, apparently without authority of law. Some directors are compensated at levels above Range 26; the various directors not compensated at Range 26 include:

(1)	Mental Health	Range 30
(2)	Public Health	Range 29
(3)	Admin. Services, DC and ED	Range 24
(4)	Alaska Disaster Office	Range 24
(5)	Alcoholic Beverages Control Board	Range 24
(6)	Elections	Range 24
(7)	Alaska Commission for Human Rights	Range 24
(8)	Rural Development Assistance	Range 24
(9)	Wage and Hour Compliance Board	Range 24
(10)	Workmen's Compensation	Range 24
(11)	Management Services	Range 24

It seems that there is a substantial ambiguity in the recommendation and that from the brief statement in the recommendation, it is possible to conclude (1) either that all positions are frozen at their present level and that reclassification may not occur without the Commission making a recommendation, (2) that a single level at which all directors are compensated should be established, or that (3) nothing is to be changed but when a director is appointed, he starts at Step A. Commissioner Elton advised at the hearing on March 14 that the Commission was aware of the existence of directors at different levels. All interpretations will cause some confusion and the committee and the legislature may wish to consider alternatives.

The commission's recommendation for changes "in the administrative rules" and the following comments are not recommendations to the legislature and are not before it.

Longevity raises are not proposed for directors; rather the salary schedule at AS 39.27.011 is utilized, presumably at the times now established, that is, annually.

(6), (7), (8), and (9) Certain listed commissions.

The Commission recommends that the Public Utilities Commission, Alaska Transportation Commission, Alaska Commercial Fisheries Entry Commission, and the Alaska Pipeline Commission commissioners be compensated at $39,372. They apparently earn $33,500 at the present time. The commission also recommends that they receive "longevity" increases "at the discretion of the Governor." It seems questionable policy to allow the governor to control the compensation of commissioners who have quasi-judicial responsibilities and who may be called upon to rule on administration proposals.

(10), (11), and (12) The Judiciary.

The commission recommended no increase for any member of the judiciary and no changes in retirement benefits for incumbent judges.

Its other recommendations regarding retirement coverage create some problems.

> (C) It recommended that <u>incumbent</u> judges begin contributing to their retirement package at the rate of 2.5% in 1979 and 1980; it says it intends to recommend a pay increase to offset the resulting decrease in compensation. Recommendations 10c, 11c, and 12 c. This, the Commission says, will solve the constitutional question (Art. IV, §13) While the possibility exists that a finely-tuned proposal of this sort <u>may</u> meet the constitution's mandate, in my judgment the "recommendation"

> containing this proposal is not before the legislature at this time. It is only a promise, conditioned on another promise not yet contained in a recommendation and no action is required on it at this time.
>
> (D) The last recommendation is that judges appointed after January 1, 1977 contribute to their retirement system. Present law contains no requirement of contributions; while the legislature may establish such a requirement, it may only do it prospectively. If it wishes to do so, it will only be effective for judges appointed subsequent to the date of the amendment of the retirement act and, since judges have been or will be appointed subsequent to January 1, 1977, the law will not apply at the time recommended.

(13) The Legislature

(A) The commission recommends an annual salary of $11,750 for members of the legislature. Such a recommendation is appropriate.

The commission then recommended that the salary be paid in four increments. Whether that recommendation has merit or not, in my judgment Ch. 263 did not authorize the Commission to vary explicit state law.

> Each member of the legislature is entitled to ... compensation ... in approximately equal monthly installments. AS 24.15.020.

The legislature may approve the recommendation and disregard the payment as ultra vires.

(B) The Speaker and the president are each entitled to $500 under the commission's recommendations. It presents no particular problems.

(C) Members of the legislature get "longevity" increases; under the commission's approach, longevity raises are granted to present members reelected in 1978. The recommendation presents no legal or constitutional problems.

(D) The commission recommends a "vouchered" annual allowance of $4,000. The amount may appropriately be set by the Commission; the conditions on its payment may not.

The legislature may approve the recommendation and disregard the voucher provision as ultra vires.

(E) The commission recommends that participation in the Public Employee Retirement System be made mandatory for members of the legislature, unless they are now contributing to a state retirement fund and will continue to be a contributing member while a legislator.

The two state retirement funds at present are PERS and Teachers. In the past, members of the legislature while on leave from teaching positions have served in the legislature and made their personal contributions as well as their employers' while in the legislature. (Bob Palmer was said to have done it that way. Presumably the benefits might have been better under the alternative system.)

My information is that such an arrangement would not be possible for employees of the state government, since they would need to resign their position to seek election. Art. II, §5, Alaska Constitution.

Members of the legislature who are retired from PERS (e.g., Ed Dankworth) would have their retirement benefits suspended during their tenure as a legislator if this recommendation is enacted, and then have their benefits recomputed at the end of their term or terms.

(F) The commission recommends that legislators receive the same per diem as is set for other state officers and employees under AS 39.20.110, including the regional variations. Appendix V to the Recommendations indicates the variations.

The commission then picks up the concept from the "Administrative Manual" of "long-term" and "short-term" per diem rates. Section 7640 of the manual establishes the procedures for payment of per diem claims. The usual per diem rate is described as the "short term rate." The Manual states:

> A short term per diem allowance is authorized when the circumstances of travel are such that the traveler can reasonably be expected to incur expenses comparable to those arising from the use of good and moderately priced establishments catering to the general public. The short term per diem rate is intended for trips of such duration that monthly rates are not obtainable. The short-term per diem may not be used after the 30th consecutive day in one location unless a continuation has been obtained in advance by the Commissioner of Administration. §7640(1)

On the other hand;

> A long term per diem allowance is authorized when the circumstances of travel are such that the traveler can reasonably be expected to incur expenses comparable to those arising from the use of establishments catering to the long-term visitor. The long term rate may not be used after six months in one location unless a continuation has been approved in advance by the Commissioner of Administration. §7640(2)

A so-called "non-commercial" rate is also authorized by §7640(3) in situations not at all analagous or relevant to the legislative situation.

The per diem allowance concepts quoted above are designed to achieve certain goals of limited relevance to the legislature. They are designed to compensate the true traveler for his reasonable expenses on short-term trips of 30 days or less. If his trip exceeds 30 days, then the assumption is that the traveler should lose the travel status where hotels and restaurants are to be expected and also that the traveler should seek less expensive accomodations, perhaps including cooking facilities. Finally, if the trip continues too long, the assumption is made that the employee has in fact changed his duty station and he is put off per diem.

Since no one expects the legislative session to be completed in 30 days, the logic of a conclusion that long term per diem is at all relevant would be that members of the legislature should move to it on the 30th day (or earlier), since it is quite reasonable to the state to expect legislators to use "establishments catering to the long term visitor." (§7640(2))

In fact, however, the Commission recommended that the long term rate be used after the 100th day of the session. The inference is in my judgment inescapable that the commission may have used the structure of the per diem allowances articulated in §7640 but it misunderstood the logic of §7640, notwithstanding Chairman Diebels' letter of March 2, 1977 to the contrary. (Senate Journal Supplement No. 23). There is no justification for per diem to be used to encourage the members of the legislature to establish a permanent residence in the state capitol. Use of the lower, long term per diem subsequent to the 100th day must, accordingly, have been designed for some other purpose.

Since it is expected that the typical member of the legislature is maintaining a second household in the district from which he or she was elected, and that, moreover, the public interest is served by this fact, then it seems that the logic of the higher, short term per diem for the entire length of the session is more in keeping with the goals of short term per diem.

In the final analysis, however, the question of concern to me is whether the Commission overreached its authority when, after setting a per diem rate, it sought to change the rate after the 100th day, an event having no apparent relevance to per diem rates.

In my opinion, the answer to the question must be that the commission sought to achieve some purpose other than the narrow responsibility given it to set the "rate of per diem instead of subsistence for each member..." AS 24.15.010. It is of some significance, perhaps, that the law requires the establishment of a single "rate."

My difficulty in providing advice to you on this question, however, is that the commission did not technically exceed the narrow language of the law, that is, it only attempted to set per diem. Unlike the other situations where either recommendation was made that is inconsistent with statutory law or a feature not included in the law was added (vouchering), in this case the apparent manipulation was more subtle.

If the legislature concludes that the commission exceeded its authority, then I suggest that the per diem recommendation be rejected and that AS 24.15.010 be amended to make it explicit that only a single per diem rate may be established.

(g) The final recommendation relative to the legislature is that each legislator be allowed the cost of a round-trip to his home district during the session. While it is not clear what the recommendation is implementing, arguably it comes in under "additional allowances" at AS 24.15.030.

In conclusion, I offer the following analysis of the Salary Commission's recommendations and the action required to implement them:

(1) Governor:

(A) Salary at $52,992. Requires a resolution to adopt.

(B) The governor "remain" in PERS. The recommendation is ambiguous; if the desire is to put him there without an option out, AS 39.35.125 will need to be amended by law.

(2) Lieutenant Governor:

(A) Salary at $47,304. Requires a resolution to adopt.

(B) See (1)(B).

(3) Department Commissioners:

(A) Salary at $47,304. Requires a resolution to adopt.

(B) Commissioners remain in PERS. No action required to implement it.

(C) "Longevity" raises. Requires a resolution to adopt.

(4) Deputy Commissioners:

(A) No change in starting salary recommended. No action required.

(B) Deputies remain in PERS. No action required.

(C) "Longevity" raises. Requires a resolution to adopt.

(5) Directors:

(A) No change in salary level recommended. No action required to implement this recommendation. If legislature wishes to clarify any of the questions presented in my analysis, then a bill would be required.

(B) Salary progression apparently under existing law. No action required.

(C) Remain in PERS. No action required.

(6) Alaska Public Utility Commission:

(A) Salary at $39,373 annually. Requires a resolution to adopt.

(B) Chairman paid an additional $500. Requires a resolution to adopt.

(C) PUC commissioners remain in PERS. No action required.

(D) "Longevity" raises at governor's discretion. Requires a resolution to adopt.

(7), (8), and (9), as to the Alaska Transportation Commission, the Alaska Pipeline Commission, and the Alaska Commercial Fisheries Entry Commission have identical recommendations.

(10) Supreme Court:

(A) Salary at $52,992. No changes recommended; no action required.

(B) No change in benefits for incumbent justices. No action required.

(C) Incumbent justices start contributing in 1979 and 1980 with a raise that the commission promises. There is in fact no present recommendation pending before the legislature and no action is required.

(D) Justices appointed after January 1, 1977 become contributing members of Judicial Retirement System at 7.5% The date cannot become the date for its implementation. The legislature must amend the Judicial retirement act by a bill and that becomes the earliest effective date. Requires an amendment to law to implement.

(11) Superior Court:

(A) Salary at $48,576. No change recommended and no action required.

(B) Identical to 10 (B)

(C) Identical to 10 (C)

(D) Identical to 10 (D)

(12) District Court:

(A) Salary at $41,068. No change recommended and no action required.

(B) Identical to 10 (B)

(C) Identical to 10 (C)

(D) Identical to 10 (D)

(13) Legislature:

(A) Salary of $11,750. Requires a resolution to adopt. If the legislature agrees, the resolution should recite that the recommendation as to payment violates AS 24.15.020. and that payment should be made pursuant to that section.

(B) Presiding officers receive an additional $500. Requires a resolution to adopt.

(C) "Longevity" pay increases. Requires a resolution to adopt.

(D) Annual allowance at $4000. Vouchered. Requires a resolution to adopt. If the legislature agrees that the vouchered concept is extraneous to the commission's authority at AS 24.15.030, it should recite that fact in the resolution.

(E) Participation in PERS be made mandatory. Requires an amendment to law to implement. Questions regarding the election to continue coverage under Teacher's Retirement and regarding members who have already retired from PERS need to be addressed.

(F) Legislative per diem at the higher, "short term" state rate, for the first 100 days of the session, with regional variations. Legislators at home get lower, "long term" rate. "Long term rate" applies after the 100th day. While I believe that the change after the 100th day violates the intent of the legislature, I am not as certain that it violates the letter of the law. Note that the legislature has traditionally had dual per diem rates, though in a different context. If the legislature disagrees with the recommendation, it may amend the authorizing law to require the establishment of a single rate; it would then also reject, by resolution or by nonaction, the recommendation.

(G) A midsession trip home. Requires a resolution to adopt.

RAB:hjd

Jud.

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 398

The board endorses the attached fiscal note as its fiscal analysis of HB 398.

A majority of the board recommends that HB 398 do pass; one member has no recommendation; and one member was absent.

SUMMARY OF HOUSE BILL NO. 398

(assuming adoption of amendments suggested by Legislative Affairs Agency)

Retirement system affected: PERS

Requires that the governor, lieutenant governor, and members of the state legislature be members of PERS. Takes effect immediately and is retroactive to January 1, 1978.

A M E N D M E N T

IN THE HOUSE

TO: House Bill No. 398

Page 1, between lines 9 and 10:

add the following new material:

* Section 1. AS 39.35.120(b) is amended to read:

(b) Inclusion in the system is a condition of employment for an employee except an elected official <u>of a political subdivision</u>.

Renumber the remaining bill sections consecutively

Page 1, lines 21-22:

delete "a participating" and insert "an" in its place

Page 2, lines 1-11:

delete all material and renumber remaining bill sections consecutively

Page 2, line 12:

change "1977" to "1978"

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 398
Title An Act Implementing Recommendation of Salary Commission Relating to Retirement
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Administration - Division of Retirement and Benefits
Program Category Affected Retirement and Benefits (PERS)
Budget Request Unit(s) Affected Public Employees' Retirement System

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars) NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. There are currently only 8 out of 62 elected state officials not already members of PERS.

2. Increase in state employer contribution rate would be minimal.

Paul B. Arnoldt

IV. DATE 1/24/78 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement and Benefits
PHONE 465-4460

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Gardiner
Office of the Governor (Keith Specking)

33-001 (Rev. 10-76)

HOUSE JUDICIARY COMMITTEE MEETING
March 29, 1977

The Meeting was called to order at 7:00p.m. Present at the meeting were Representatives Gardiner, Dankworth, Rudd, Miles, Specking, Brown and Eliason.

HB 265

HB 265 was taken up as the first order of business. Mr. Dankworth gave a brief testimony in favor of the bill.
Mr. Specking made the motion to move the bill out of Committee.
The motion was unanimously passed.

The Next order of business was HCR 45 and HB 398. The Committee members read over the opinions in the files from the AG's office and Dick Bradley, Legislative Affairs.

Rod Pegues was the first witness to speak on the bill, representing the Attorney General's Office.

Dick Bradley also gave testimony on these bills and it was pointed out by the Committee members that these two witnesses' interpretations of the bills varied considerably. Some points brought up were concerned with the constitutionality of the bills.

A number of motions for amendments were made by the Committee:

Specking Delete 13(f) Line 18 "for the first hundred days of the session". Then asked if both of the attorney's agreed on this particular change. The attorney's did not agree that this was acceptable.

Specking noted the diversitive opinons among the legal opinions that were at the meeting. He stated that he would follow Pegues' opinion and also suggested another change in the bill: $50 a day away from home and $35 a day near home..and asked the staff to draft accordingly.

Brown Line 16, change to Legislators who do not reside....asked the attorney's if this would upset the apple cart?

Bradley caution continues that you are either authorized to accept or reject recommendations of the Salary Commission, he thought that the Commissions recommendations were legal.

Rudd The language of the salary Commission is beyond the scope of the Salary Commissioner because they are only authorized to decide the rate and form of legislative contributions.

continued confusion----------

Brown Motion to change (Line 16) "change the.....city of residents to "do not reside in their election districts"
Line 17, put a period after short term rate and delete the rest.(18,19 &20

Specking brought out the problems with Brown's change.

Rudd Amendment - (;) after rate and delete lines 18, 19.

Gardiner asked for vote on the motion: 4 in favor
3 opposed

Pegues spoke to 13(g) and said that setting salaries by residence is shakey by the constitution.

Specking suggested drafting this idea into a bill and run it through also.

Brown: Motion to delet lines 21 through 23, motion carried unanamously.

Bradley spoke to the LAST RESOLVED section of the resolution: give the Commission a mandate in establishing an equitable balance is altered - justification for this last session.

Specking Motion to delet lines 2 through 5, no objection to motion.

Eliason Move to rescend motion on pg. 4 lines 14-20, motion failed.

HB 398

Pegues testified on the bill, said that it couldn't be done.

HB 278 was briefly brought up and Art Snowden gave brief disertation.

Gardiner asked if there were any amendments to HB 398?

There was further discussion on this bill but no motions or amendments were brought before the Committee.

The Meeting was adjourned at 9;00 p.m. with no final action being taken on HCR 45 and HB 398.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 398
Title An Act Implementing Recommendation of Salary Commission Relating to Retirement
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Administration - Division of Retirement and Benefits
Program Category Affected Retirement and Benefits (PERS)
Budget Request Unit(s) Affected Public Employees' Retirement System

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars) NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. There are currently only 8 out of 62 elected state officials not already members of PERS.

2. Increase in state employer contribution rate would be minimal.

Paul B. Arnoldt

IV. DATE 1/24/78 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement and Benefits
PHONE 465-4460

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Gardiner
Office of the Governor (Keith Specking)

OK ab

33-001 (Rev. 10/76)

HB
400

MEMORANDUM
LEAGUE OF WOMEN VOTERS OF ALASKA

TO: Rep. Hugh Malone, Speaker
Rep. Bob Bradley & Rep. Terry Gardiner

DATE: April 1, 1977

FROM: Marjorie Gorsuch & Janice Gates, Lobbyists, LWV Ak.

SUBJECT: H.B. 400 An Act Relating to Conflict of Interest

The League of Women Voters of Alaska supports the passage of H.B. 400 and respectfully urges its consideration. The reporting requirements of the Conflict of Interest law are an on-going responsibility of those covered by the law, therefore many would benefit from legislative action to improve the law this session.

H.B. 400 should be given consideration for the following reasons:

I. Enforcement (AS 39.50.060 (a) AS 39.50.085)

(a) The League's primary concern with the present conflict of interest law has been in the area of enforcement. The Saylors Case pointed up a deficiency in the wording of the law which makes it unenforceable.

According to a ruling by a District Court judge in the First Judicial District, Section AS 39.50.060 (a) is constitutionally vague and he opined that a person could be charged under either part of the section given the same set of circumstances, and that the first portion of the section required general intent and the second specific intent, and that the Court could not instruct on both. On the basis of this he dismissed the case.

The proposed wording attempts to solve this problem. The League supports a change in this section which will reinstate effectiveness and reestablish confidence in the enforcability of the law.

(b) Another enforcement defect in the present law relates to the omission of penalties for noncompliance by municipal officers. H.B. 400 addresses this omission in an effective and reasonable manner.

II. Reporting by Municipal Officers (AS 39.50.085)

The League has long supported an amendment contained in H.B. 400 which would require municipal officers to disclose contracts with the municipality. When the original initiative was extended to cover municipal officers, this reporting of contracts was not amended to reflect an interest which should be reported under the law in the case of a municipal officer.

III. General Clarification

H.B. 400 clarifies existing language and eliminates unnecessary and burdensome requirements (such as having candidates file an additional conflict of interest statement when a current one is on file). The League supports these efforts at making the existing law more reasonable and comprehensible for those who are required to comply.

The League will be pleased to present section by section comments on request..

HB 400
HB 401

Alaska State Legislature

House

JUNEAU ALASKA

M E M O R A N D U M

TO: Representative Terry Gardiner, Chairman
House Judiciary Committee

FROM: Hugh Malone HM

DATE: February 23, 1978

Attached are proposed amendments to HB 400 and 401 recommended by the APOC in accordance with AS 15.13.030 (9)

If we have these in our Com. it will get them - hold

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

610 C STREET, SUITE 209
ANCHORAGE, ALASKA 99501
PHONE: 276-4176 AND 274-0321

February 15, 1978

Honorable Hugh Malone, Speaker
House of Representatives
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Rep. Malone:

Transmitted herewith on behalf of the Alaska Public Offices Commission are copies of bills containing proposed amendments to AS 15.13, the campaign disclosure law, and AS 39.50, the conflict of interest law. These have been prepared and are being submitted in accordance with AS 15.13.030(9).

In addition, enclosed are two other documents which are provided as back-up and rationale for these short amendments being suggested by the Commission to the Legislature. These proposed amendments are in addition to legislation first introduced during the last session and currently pending in the form of HB 400 (amendments to AS 39.50), which is presently in House Judiciary, and HB 401 (amendments to AS 15.13) presently in House State Affairs.

The Commission respectfully requests that consideration be given to an early introduction of and action on bills containing these recommended amendments.

Respectfully yours,

ALASKA PUBLIC OFFICES COMMISSION

Randall P. Burns

RANDALL P. BURNS, Executive Director

RPB/kjb
Enclosures

01-A9LH

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to conflict of interest; and providing for an effective date."

* Section 1. AS 39.50.020(a) is amended to read:

Sec. 39.50.020. REPORT OF FINANCIAL AND BUSINESS INTERESTS. (a) A judicial officer, commissioner, chairman or member of a state commission or board specified in 200(9) of this chapter, person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, person appointed as assistant to the governor, and a municipal officer, shall file a statement giving his income sources and business interests, under oath and on penalty of perjury, within 30 days after he takes office as a public official. Candidates for state elective office shall file such a statement at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for state elective office who filed for office during an off-election year shall file another such statement on or before June 1 of the election year. Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that his previously accepted filing fee be returned and his name removed from the filing records. A statement shall also be filed by public officials no later than April 15 [OR 15 DAYS AFTER THE PERSON FILES HIS FEDERAL INCOME TAX RETURN] in each following year [, WHICHEVER SHALL COME FIRST]. Upon termination from a position subject to the reporting requirements of this chapter, a person must file a statement covering the period from the final date of his last previous statement through the date of his termination. [PERSONS WHO, ON OR AFTER DECEMBER 11, 1974, WERE MEMBERS OF BOARDS OR COMMISSIONS NOT NAMED IN 200(9) OF THIS CHAPTER ARE NOT REQUIRED TO FILE FINANCIAL STATEMENTS.]

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

RATIONALE FOR PROPOSED CHANGES
TO AS 39.50, ALASKA'S CONFLICT OF INTEREST LAW

The following changes are proposed and rationale provided:

I. PROPOSED CHANGE:

"Candidates for state elective office who filed for office during an off-election year shall file another such statement on or before June 1 of the election year."

RATIONALE:

A "current" conflict of interest statement discloses a person's business and financial interests for the preceding calendar year. Arguably, it was the intent of AS 39.50 that candidates for state elective office would file for office during the year in which they planned to campaign for nomination and election. Therefore, all candidates would have a COI statement on file disclosing their financial interests during the same preceding year.

However, as a result of the Commission's decision regarding AS 15.13.100, persons wishing to expend money to raise money must first formally file for office. This creates the following problem:

A public official, who files to run for state elective office in 1978 prior to January 1, 1978, does not need to file a conflict of interest statement because he/she already has a current statement on file (covering 1976). On or before April 15th of 1978 the public official, who is also a declared candidate, will have to file the annual COI statement, covering the preceding year: 1977.

A person (not a public official), who files to run for state elective office in 1978 prior to January 1, 1978, must file a conflict of interest statement covering their financial interests during the preceding year: 1976.

A person, who files for state elective office after January 1, 1978, must file a conflict of interest statement covering their financial interests during the preceding year: 1977.

Therefore, the person who files to run for state elective office in 1977 will not have a current conflict of interest statement on file during 1978 -- the year in which he is actively campaigning for his nomination and election.

Since AS 39.50.020 specifically states that "candidates for state elective office shall file such a statement at the time of filing a declaration of candidacy" (emphasis added), the proposed additional language would result in all candidates having a COI statement for the same prior year.

II. PROPOSED CHANGE:

"Upon termination from a position subject to the reporting requirements of this chapter, a person must file a statement covering the period from the final date of his last previous statement through the date of his termination."

RATIONALE:

Public officials subject to the reporting requirements of AS 39.50, the conflict of interest (financial disclosure) law, file conflict of interest statements each year (by April 15th) for so long as they hold such a position.

The report filed covers the preceding calendar year.

If a public official retires, resigns, or otherwise ceases to hold a position subject to AS 39.50 before the due date of his next report (April 15th), the law does not currently require that official to disclose his business and financial interests for any part of the period that he was in office since his previous report. The following are examples of what presently occurs:

1) An official files his annual conflict of interest (COI) statement on April 15th of this year, covering 1977 (the preceding year). He then resigns his position in late October of this year. Since he is not required to file a statement upon termination, his financial and business interests for the ten (10) months he held office in 1978 go undisclosed.

2) An official files his annual COI statement on April 15th of this year, covering 1977 (the preceding year). He resigns just short of a year from then, on April 10, 1979. If only public officials, as defined by AS 39.50.200(1), are required to file a COI statement on or before April 15th, and if an official resigns from a position subject to AS 39.50 before that due date, then the person cannot be required to file a statement, as in this example, for the year and three months that he held office as a public official (January 1, 1978 - April 10, 1979), nor is he required to disclose his business and financial interests for any of that period of time.

The Commission has discussed this problem at length and feels it is not in the public's interest to allow a "loophole" such as this one to continue unremediated. Currently, the public has no accurate way of knowing whether or not an official has acted "upon a private or business interest in the performance of a public duty [AS 39.50.010(a)(1)]" if there is no statement of that official's financial and business interests from the final date of his last report through his termination date in the position.

Why should the business and financial interests of an official's last months -- or year -- in office go undisclosed? It seems contrary to the scope and intent of AS 39.50. The Attorney General's Office has stated a change of this nature requires legislative remedy: here is our request.

III. The other changes were proposed by the Commission earlier this year and exist in HB 401. Basically, both are administrative changes. The Commission has no way of enforcing the "15 days after the person files his federal income tax return," and the final sentence in 39.50.020 is no longer applicable since the law has now been in effect since early 1975.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to campaign disclosure; and providing for an effective date."

* Section 1. AS 15.13.070 is amended by adding a new subsection to read:

(i) No contribution may be made and no expenditure may be made or incurred, directly or indirectly, by the state or an entity of the state, to influence the election of a candidate or for or on behalf of a group organized to support or defeat a ballot proposition or question. All other communications which are paid for by the State or an entity of the State and which are related to an election are considered to be intended to influence the outcome of an election unless they are only notices of the election or unless they are required by statute or regulation. When the State or an entity of the State seeks to influence the outcome of an election, it shall report in the same manner as a group. For the purpose of complying with AS 15.13.040(b)(1)'s requirement to list the name and address of each officer and director, the State or an entity of the State shall list the name and address of the governor and the entity's principal officials. For the purpose of complying with AS 15.13.040(b)(1)'s requirement to list the name and address of its campaign treasurer, the State or an entity of the State, shall list the name and an address of the department or agency's finance director, fiscal officer, or equivalent officer. For the source of contributions [AS 15.13.070(h)], the State or an entity of the State shall list the particular department, division, agency or entity from whose budget the appropriation is made.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

RATIONALE FOR PROPOSED CHANGE

IN AS 15.13, ALASKA'S CAMPAIGN DISCLOSURE LAW

The rationale for the proposed language amending AS 15.13.070 is simple: the Alaska Public Offices Commission firmly believes that the State of Alaska and any agency, entity, or instrumentality of the State should be prohibited from involving itself in directly attempting to influence the election of a candidate or supporting groups attempting to influence the outcome of a ballot proposition question.

Although one would perhaps assume that the State remains removed from such issues, i.e., that public money is not be expended to influence the election process, the University of Alaska's veiled involvement in attempting to influence the passage of its bond issues is a good example.

A previous proposed amendment, found in HB 401, Section 1, included the State and its instrumentalities within the purview of AS 15.13. The affect of this current proposal and the one already in HB 401 would, it seems to me, do the following:

1) Require that any money spent by any State agency on communications related to an election be reported by the applicable agency. For instance, if the Department of Natural Resources was to run a series of advertisements simply stating the contents of the Homestead Initiative as part of the State's thrust to educate the public as to issues before it, the cost of printing the advertisement would have to be reported by the Department.

2) Prohibit absolutely State agencies from contributing directly or indirectly to candidates or groups, and prohibit the making or incurring of expenditures for or on behalf of candidates or groups.

The Commission does not wish to prohibit the State or entities of the State from communicating with the citizenry regarding voter information on bonds, ballot issues, etc. It feels, however, that such expenditures are reportable as campaign expenses and should be disclosed as such. (All municipalities subject to AS 15.13 currently report as this proposed amendment would require the State.)

The Commission does believe the State and entities of the State should not be involved in supporting any candidate or group attempting to influence the outcome of an election.

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

610 C STREET – ROOM 209
ANCHORAGE 99501
PHONE (907) 274-0321 or 276-4176

in journal

March 11, 1977

MAR 14 1977

Honorable Hugh Malone, Speaker
House of Representatives
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Rep. Malone:

Transmitted herewith on behalf of the Alaska Public Offices Commission are copies of bills containing proposed amendments to AS 15.13, campaign disclosure law and AS 39.50, conflict of interest law. These have been prepared and are being submitted in accordance with AS 15.13.-030(9).

Also enclosed is an analysis of the effect of and rationale for the recommended changes and is intended to offer a general explanation of the amendments.

The Commission respectfully requests that consideration be given to an early introduction of and action on bills containing these recommended amendments.

Respectfully yours,

ALASKA PUBLIC OFFICES COMMISSION

Wilda G. Hudson

WILDA G. HUDSON, Executive Director

WGH/cl
enclosures

HB 400
401

ALASKA PUBLIC OFFICES COMMISSION
610 C Street, Suite 209
Anchorage, Alaska 99501

EFFECT OF AND RATIONALE FOR AMENDMENTS TO THE CONFLICT OF INTEREST LAW PROPOSED BY THE ALASKA PUBLIC OFFICES COMMISSION

* Section 1. AS 39.50.020(a) - amended.

The first amendment is language change to reflect in the law the commonly used term "financial and business interest" rather than the little-used term "income sources."

The second amendment simply to reference the section of the law which sets out the reporting requirements.

The third amendment adding "within 15 days after" and deleting "at the time of" is to accomodate the severe problem that was experienced in 1976 by candidates when they filed for office and by the lieutenant governor's office and the APOC when determining whether the candidate had met the filing requirements. This will avoid candidates having to file this rather extensive form at the time they file (particularly when they file on the last day) yet it will assure that they have filed prior to the ballots having to go to the printers. "15" replaces "30" days for other forms of filing for consistency.

The amendment relating to municipal candidates adding "within 7 days after" and dropping "at the time of" is to accomodate the municipal candidates in their filing; however, the time frame for municipal candidates must be shorter in order for the municipal clerks to get their ballots to the printers in a timely manner.

The amendment "except that if the candidate has a current statement on file with the commission this requirement does not apply" is necessitated due to two court cases brought by disqualified candidates in 1976. APOC had not required a candidate to file another conflict of interest if they had a current one on file. A Superior Court judge ruled that this was unequal treatment of candidates and that the law required that a statement be filed "at the time of filing a declaration of candidacy"; therefore, every candidate must do so regardless of having one on file. The Supreme Court reversed the ruling of the Superior Court judge. This amendment will, by law, make it unnecessary for a candidate to file a duplicate statement.

The final amendment to this section establishes only one firm deadline for filing statements: April 15. The last sentence is deleted because it is no longer applicable.

* Section 2. AS 39.50.030(a) - amended.

The first amendment is language change for consistency. The second amendment dropping the last sentence is because this sentence has been a source of confusion as to whether assets over $500 are required to be reported. This has been added as subsection (9) of this section so that there will be no doubt but what assets over $500 must be reported.

* Section 3. AS 39.50.030(b)(2) and (7) - amended.

Subsections (2) and (3) as presently written are practically duplicates and cause confusion. The requirements of these two sections have been designed as one section on the reporting form. By combining the requirements of both subsection (2) and (3) into subsection (2) and repealing subsection (3) the law is made more clear.

As subsection (7) is presently written it requires municipal officers to report contracts they hold with the state but not those they hold with the municipality. This would correct that problem. Also this section is amended to require the reporting of only contracts "held" and not those "offered or bid."

* Section 4. AS 39.50.050(d) - amended.

It is unrealistic to require the "publishing" of all 450 plus conflict of interest statements. These amendments reflect the administrative method being used this year. APOC has had no requests for "published" conflict of interest statements; we have had a few requests for the listing of names of public officials.

* Section 5. AS 39.50.030(b) is amended by adding a new subsection.

See Section 2 for rationale of this amendment.

* Section 6. AS 39.50.060(a) - repealed and re-enacted.

According to a ruling by a District Court judge in the First Judicial District, in a case before his court, this section as presently written was found to be constitutionally vague and he opined that a person could be charged under either part of the section given the same set of circumstances, and that the first portion of the section required general intent and the second specific intent, and that the Court could not instruct on both. On the basis of this he dismissed the case. This amendment was suggested in 1976, to a legislator who was concerned about the problem, by an assistant attorney general.

* Section 7. AS 39.50.060(c) - new section added.

This section sets out the penalties for violation of (a) under this section.

* Section 8. AS 39.50.085 - new section added.

The law does not provide for penalties for failure to report by municipal officers as it does for state public officials. This amendment does that. It is patterned after penalties for state officials. Municipal clerks and attorneys have inquired about this "void" in the law.

* Section 9. AS 39.50.200(1) and (9) - amended.

(1) The Act establishing the ombudsman's office in 1975 provided that the "ombudsman, the deputy ombudsman and their professional staff" were subject to AS 39.50; however, AS 39.50.200(1) was not amended in the Act to reflect this fact. This amendment corrects that oversight.

(9)(E) and (KK). These two committees had an expiration date of January 1, 1977, by law.

(9)(J). The Board of Fish and Game was abolished and two boards created in its place: The Board of Fisheries and the Board of Game. These two new boards were not brought under the provisions of AS 39.50.

(9)(EE). This was abolished when the State Operated Schools were replaced by the establishment of the Rural Education Associations.

(9)(MM). The Act establishing the Alaska Power Authority provides that members of this commission are subject to AS 39.50; however, AS 39.50.-200(9) was not amended to reflect this fact. This amendment corrects that oversight.

* Section 10. AS 39.50.030(b)(3) and AS 39.50.150 - repealed.

Subsection (b)(3) has been incorporated into subsection (b)(2).

Section 150 is no longer applicable.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to conflict of interest; and providing for an effective date."

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

* Section 1. AS 39.50.020(a) is amended to read:

(a) A judicial officer, commissioner, chairman or member of a state commission or board specified in §200(9) of this chapter, person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, person appointed as assistant to the governor, and a municipal officer, shall file a statement of [GIVING] his financial [INCOME SOURCES] and business interests required under sec. 30 of this chapter, under oath and on penalty of perjury, within 30 days after he takes office as a public official. Candidates for state elective office shall file such a statement within 15 days after [AT THE TIME OF] filing a declaration of candidacy or within 15 [30] days of the filing of any nominating petition, or within 15 [30] days of becoming a candidate by any other means, except that if the candidate has a current statement on file with the commission this requirement does not apply. Candidates for elective municipal office shall file such a statement within 7 days after [AT THE TIME OF] filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office, except that if the candidate has a current statement on file with the municipality this requirement does not apply. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that his previously accepted filing fee be returned and his name removed from the filing records. A statement shall also be filed by public officials no later than April 15 [OR 15 DAYS AFTER THE PERSON FILES HIS FEDERAL INCOME TAX

RETURN] in each following year[, WHICHEVER SHALL COME FIRST]. [PERSONS WHO, ON OR AFTER DECEMBER 11, 1974, WERE MEMBERS OF BOARDS OR COMMISSIONS NOT NAMED IN SEC. 200(9) OF THIS CHAPTER ARE NOT REQUIRED TO FILE STATEMENTS.]

* Sec. 2. AS 39.50.030(a) is amended to read:

(a) Each statement shall be an accurate representation of the financial and business interests [AFFAIRS] of the public official or candidate and shall contain the same information for each member of his family, as specified in (b) of this section, to the extent that it is ascertainable by the public official or candidate. [AN ASSET OR LIABILITY UNDER $500, HOUSEHOLD GOODS, AND PERSONAL EFFECTS NEED NOT BE IDENTIFIED.]

* Sec. 3. AS 39.50.030(b)(2) and (7) are amended to read:

(2) the identity, by name and address, of each business, and the nature of each interest owned in any business, in which he or his spouse or dependent child of his or nondependent child of his who is living with him was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(7) a list of all contracts [AND OFFERS TO CONTRACT] with the state, or an instrumentality of the state, in the case of state public officials, and with the municipality in the case of municipal public officials, during the preceding calendar year[,] held[, BID OR OFFERED] by him, his spouse, dependent child of his or nondependent child of his who is living with him, his mother or father or a partnership or professional corporation of which he is a member, or a corporation in which he or his spouse or his children, or a combination of them, hold a controlling interest; and

* Sec. 4. AS 39.50.030(b) is amended by adding a new subsection to read:

(9) assets over $500 not otherwise described in this section; household goods and personal effects need not be reported.

* Sec. 5. AS 39.50.050(d) is amended to read:

(d) To facilitate the filing of reports under AS 24.45[.25] (Regulation of Lobbying) and the information required to be provided under AS 24.45.051(4) and (5), the commission shall prepare a listing of names of all public officials and their official positions who are [PUBLISH COPIES OF THE REPORTS] required to file statements under this chapter not later than the convening of each regular session of the legislature. Copies of this listing and copies of any reports [PUBLICATION] shall be provided on request; however, the commission may make a charge for the copies [PUBLICATION] which may not exceed the actual cost of printing, postage and handling.

* Sec. 6. AS 39.50.060(a) is repealed and re-enacted to read:

(a) A person required to file a statement of financial and business interests under this chapter

(1) who wilfully refuses to disclose required information when due is guilty of a misdemeanor;

(2) who wilfully fails to disclose required information when due is guilty of a misdemeanor; or

(3) who wilfully provides false or misleading information on such a statement is guilty of a misdemeanor.

* Sec. 7. AS 29.50.060 is amended by adding a new section to read:

(c) A person convicted under (a) of this section is punishable by a fine of not more than $5,000 and by imprisonment for a period of not more than 1 year or both.

* Sec. 8. AS 39.50 is amended by adding a new section to read:

Sec. 39.50.085. FAILURE TO REPORT BY A MUNICIPAL OFFICER. (a) If an elected municipal officer refuses or fails to file the required statements when due he shall not be paid his salary, per diem, or travel expenses after the due date until he complies with the requirements of this chapter and is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000.

(b) A person hired or appointed as a municipal officer shall not receive salary, travel expenses, or per diem for any period after the initial 30 days after the completion of his appointment or after his entry into municipal employment if he has not complied with the requirements of this chapter; if he has not complied with the requirements of this chapter by the 60th day he shall be removed from office and his position is vacant. If after installation as an appointed municipal officer he refuses or fails to file the required statement when due, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000.

* Sec. 9. AS 39.50.200(1) and (9) are amended to read:

(1) "public official" means a judicial officer, a member of the legislature, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, the ombudsman, the deputy ombudsman and their professional staff, and each appointed or elected municipal officer;

(9) [(E) CAPITAL SELECTION COMMITTEE (INITIATIVE #1, 1974);]

[(J) BOARD OF FISH AND GAME (AS 16.05.220);]

[(EE) BOARD OF DIRECTORS, STATE OPERATED SCHOOLS (AS 14.08.030);]

[(KK) GAS PIPELINE IMPACT COMMITTEE (AS 31.30.040)]

(MM) Alaska Power Authority (AS 44.56.020).

* Sec. 10. AS 39.50.030(b)(3) and AS 39.50.150 are repealed.

ALASKA PUBLIC OFFICES COMMISSION
610 C Street, Suite 209
Anchorage, Alaska 99501

EFFECT OF AND RATIONALE FOR AMENDMENTS TO THE CAMPAIGN DISCLOSURE LAW PROPOSED BY THE ALASKA PUBLIC OFFICES COMMISSION

General comment: Throughout the law there has been an attempt to make the language consistent, which has been cause for amendments that otherwise would not have been suggested had not amendments of substance been required. For instance, in some sections "persons" is used alone, other sections "persons" and "candidates" are used and other sections "candidates" and "groups" are used.

* Section 1. AS 15.13.010(b) - amended.

"Person" is added for consistency in language.

"State or instrumentality of the state" is in response to inquiries from the public and the desire to have the state covered. The Commission feels that the state should have to report any monies spent for influencing the outcome of an election.

* Section 2. AS 15.13.020(b), (c), (d) and (f) - amended.

(b) This would have no effect upon the present method of appointment. It would modify the language to deal with future appointments rather than the initial appointments.

(c) The effect of this amendment is merely to modify the language to read more clearly and specifically.

(d) The effect of this is to modify the language to delete reference to initial appointments and to deal with future appointments.

(f) At times members of the Commission, particularly the chairman, spend time on Commission business apart from the meetings, even to the extent of taking time off from work. It is felt in such instances members should be compensated.

* Section 3. AS 15.13.020(j) and (k) - repealed and re-enacted.

These two sections address the establishing of district offices and what is required of them and also speaks to municipalities.

As presently worded, these two sections are confusing and incomplete. As rewritten, they attempt to make it clear that the Commission shall establish district offices (they are called only "district offices" in the re-enacted wording and no mention is made of "regional offices"). It outlines specifically where reports shall be made available to the public. It is felt that there should be flexibility to allow persons to file in the municipalities since the objective is to have the reports available to the public in a timely manner. To require municipal candidates to file first with the Alaska Public Offices Commission does not provide for this objective. The specifics of filing can

be worked out administratively through regulations and the manual of instructions. Also, the law as presently written does not require that reports filed by groups, etc., be made available in the district offices. The new language covers this area.

* Section 4. AS 15.13.030(2), (4), (6), (7) and (9) - amended.

(2), (4) and (6) are to achieve consistency in language.

(7) has been substantially changed. As presently written it does not state what shall be reported to the attorney general and what has been reported in the past clutters up the files with minor infractions that will not be, nor should they be, prosecuted by the attorney general. It is suggested that perhaps what should be addressed in this section should be the failure to file reports. With this in mind, subsections (6), (7) and (8) have been tied together with sec. 125 to reach the issue of violations in a meaningful way.

Sec. 125, civil penalties, speaks to the issue of late filing and such infractions would not need to be included in the report to the attorney general as seemingly is now required in the vague wording of the present law: "who have failed to comply with any of the provisions of this chapter."

Subsection (6) is expanded to require APOC to notify by certified mail all those who are delinquent in filing under the law.

Subsection (7) is re-written to require that APOC report to the attorney general those persons who fail to file reports within 30 days after they have been notified. This, then, would lessen the names sent to the attorney general and would require notification to the attorney general in a meaningful time frame for this more serious violation.

Subsection (8) would reach those violations not covered under sec. 125 for late filing and subsection (7) for failure to file. This subsection is meant for the more serious violations.

(9) is amended to be consistent with the language of AS 24.45 as concerns the annual report.

* Section 5. AS 15.13.030 - New subsection added.

(11) is added to be consistent with the other two disclosure laws for the retention of reports and statements by the Commission. AS 15.13 does not have a requirement as to length of time records must be retained. Sec. 120(e) speaks to the fact that prosecution may not be commenced after 4 years.

* Section 6. AS 15.13.040 - repealed and re-enacted.

Note: This section as presently written is inconsistent. [e.g. Sec. (a) speaks to candidates, then secs. (b) & (c) speak to groups, secs. (d) & (e) to individuals. Also secs. (a) & (b) do not require anything but the date and amount of expenditures to be reported]. This section as re-enacted does the following:

(a) speaks to candidates and is more specific in what the candidate must include on his report broken down into subsection (1) contributions and (2) expenditures. The requirements here are what is now being required by design of form; however, the law does not now require it.

(b) speaks to groups and sets forth what must be included on their reports in a manner consistent with the reporting requirements for candidates. The requirement of existing sec. 40(b)(1), that officers and directors be listed, has been moved to sec. 50(a). This places all group requirements under one section (b) instead of (b) and (c), as now written. Also, it adds that the reports may be signed by the group's chairman. To require that a group's report may be signed by only the group's treasurer has been placing a hardship on some groups.

(c) speaks to individuals and persons (other than groups) and incorporates the present requirements of secs. (d) and (e). It sets forth what must be included on their reports in a manner consistent with the requirements of candidates. It also corrects $100 to $250. The reporting date of "10 days" has been moved to sec. 110(e), filing of reports, to be consistent.

(d) speaks to suppliers of services and contains what is now contained in sec. (f). The last sentence has been dropped because sec. 30(3) states that all records are public records and this is a repeat that is unnecessary here. The last sentence of this section is new, however, and requires that all records of the suppliers of services shall be available to the Commission upon request.

* Section 7. AS 15.13.045(a), (b) and (c) - amended.

(a) The replacement of "conduct investigati[illegible]" is merely a language change as it is felt an investigation would be conduct[illegible]re holding a hearing. This section has been expanded to include AS 24.45 and[illegible]50.

(b) has been expanded to include AS 24.45 and [illegible]9.50.

(c) has been expanded to include AS 24.45 and AS 39.50.

* Section 8. AS 15.13.050 - amended.

"Groups" are spoken of in two sections of the law as presently written: sec. 50 and sec. 130(3) under definitions. Additionally, sec. 50 presently does not require groups to register prior to filing their first report. This section has now been broken down into three thoughts:

(a) speaks to when candidates and groups must register. It has been expanded to include the requirement that groups must also register before making an expenditure concerning a ballot proposition or question. The requirement to report the names of officers and directors has been placed here rather than in sec. 40(b)(1) as presently written.

(b) speaks to the requirement that the name of the candidate must be included in the name of the group. This is the same language as presently in the middle portion of sec. 50.

(c) speaks to the candidate's control of a group. Except for the last sentence in sec. 50 (the portion NOT underlined in this section), the underlined wording is "lifted" from sec. 130(3). This change was suggested last year by the LWV and was included in the bill which was introduced last year.

* Section 9. AS 15.13.060(b), (c), (d) and (f) - amended.

(b) This is expanded to require a group to appoint a chairman and file the name with the APOC. This is necessary if a chairman as well as a treasurer, is going to be allowed to sign reports (refer to Section 6, subsection (c) of this analysis).

(c) This drops the requirement that a candidate must have filed his treasurer's name with APOC or his name will not appear on the ballot. This is the same amendment the Commission recommended last year.

(d) This is the same amendment the Commission recommended last year. It is felt that the "punishment" is too great for the "crime," and it is considered to be an unenforceable section.

(f) This amendment places more of the "burden of compliance" on the candidate.

* Section 10. AS 15.13.060 - new section added.

As presently written, it would appear that the group's treasurer is held solely responsible for the group's activities as concerns campaign disclosure. Yet, a treasurer is not the sole policy maker for a group and often merely carries out the policy decisions of the group's officers. This is an attempt to hold persons in the group, in addition to the treasurer, responsible.

* Section 11. AS 15.13.070(a), (b) and (d) - amended.

(a) "Individual" and "persons" [in (a)(2)] is for consistency in language. The remaining amendments are to bring Alaska's law in line with the U. S. Supreme Court decision, Buckley vs. Valeo.

(b) "Group" is for consistency in language.

(d) As presently written, the law does not prohibit groups from receiving anonymous contributions as are candidates. This language change would do so.

* Section 12. AS 15.13.090 - amended.

"Person" is for consistency in language. The other amendment would delete the requirement that a candidate include the fact that he is his own campaign treasurer on political advertising.

* Section 13. AS 15.13.100 - amended.

This would allow candidates to accept contributions and make expenditures prior to filing a nomination for office. It does require that such must be reported, however.

* Section 14. AS 15.13.110(a)(4), (b) and (c) - amended.

(a)(4) is amended to make it clear that, during an election year, the December 31 report is for reporting any campaign contributions received and expenditures made which occurred after the 10 day post-election report and not for reporting contributions and expenditures not previously reported within their appropriate reporting period. Any such contributions or expenditures not reported within the appropriate period pose a different problem and would be handled in a different manner.

(b) This is the same amendment that was included last year. It closes the 3 day "hole" in the reporting procedure between the cut off date of the 7 day pre-election report and the first day the "24 hour" report is due.

(c) The substantive amendment to this section provides, by law rather than regulation, that the postmark date shall be considered the filing date. The remainder of the corrections are language changes.

* Section 15. AS 15.13.110 - new sections added.

(e) This new section states when an individual or person who makes a contribution or expenditure shall file their reports. This was previously included in sec. 40(e) under what must be reported. This change is for consistency in the law.

(f) This new section provides that a candidate may file an affidavit stating that he does not plan to receive contributions or make expenditures during his campaign. He would not be required to file any other reports. If, however, he should receive contributions or make expenditures he must then file the appropriate reports.

* Section 16. AS 15.13.120(a)(2) and (5) - amended.

(2) Amendment necessary to bring Alaska's law into conformity with the U. S. Supreme Court decision, Buckley vs. Valeo.

(5) This is amended to include a ballot proposition or question.

* Section 17. AS 15.13.125 - amended.

This amendment brings the late filing of the statements of designation of treasurer and registration of a group under the civil penalties section.

* Section 18. AS 15.13.120(2), (3), (4) - amended.

(2) Correction of sentence structure and to make it read same as language in subsection (4) "expenditure." (2)(D) is added to make it clear that by law a personal loan from a bona fide lending institution is not considered a loan. This reflects the present policy of the Commission.

(3) This amends the definition of "group" to include "political action committees," which more and more are becoming a common type of campaign organization.

(3)(A) This addition makes it clear that a candidate's personal campaign committee is not a "group" which would be required to report separately from the candidate.

(3)(B) This addition makes a distinction between those groups formed primarily for political purposes and those that are ongoing groups whose primary purpose is other than political. Such groups will be treated as "persons" rather than "groups."

The last amendment to (3) deletes a large portion of the definition of "group." This deleted portion has been incorporated in sec. 50 which is the more logical place.

(4) These amendments reflect correction of sentence structure only.

* Section 19. AS 15.13.030 - New subsections added.

(8) This definition of "instrumentality of the state" is necessary due to amendments in sec. 10(b) which brings the state under the requirements of AS 15.13.

(9) The meaning of the term "political committee" has never been too clear and is the cause of inquiry by the public. This makes it clear.

* Section 20. AS 15.13.070(f) and (g) and AS 15.13.080 - repealed.

(f) and (g) are repealed in order to bring Alaska's law into conformity with the U. S. Supreme Court decision, Buckley vs. Valeo.

(080) is repealed because its contents have been incorporated in secs. 40(c) and 110(e) where they should more logically be placed. The requirement that the candidate be furnished a copy of the contributor's report generates unnecessary paperwork of questionable value.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to campaign disclosure; and providing for an effective date."

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

* Section 1. AS 15.13.010(b) is amended to read:

(b) Except as otherwise provided, this chapter applies to contributions, expenditures, and communications made by a candidate, group, person, municipality, the state or instrumentality of the state, or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

* Sec. 2. AS 15.13.020(b), (c), (d) and (f) are amended to read:

(b) [THE GOVERNOR SHALL APPOINT TWO MEMBERS OF EACH OF THE TWO] The political parties whose candidates for governor received the highest and second highest number of votes in the most recent gubernatorial election [PRECEDING GENERAL ELECTION AT WHICH A GOVERNOR WAS ELECTED] are each entitled to two seats on the commission as vacancies occur. The names of two nominees shall be submitted to the governor by the central committee of the respective party for each vacancy and the governor shall fill the vacancy from the nominees submitted to him by the central committee. [THE TWO APPOINTEES FROM EACH OF THESE TWO PARTIES SHALL BE CHOSEN FROM A LIST OF FOUR NAMES TO BE SUBMITTED BY THE CENTRAL COMMITTEE OF EACH PARTY.]

(c) The four members selected under (b) of this section shall, by majority vote, appoint the [REMAINING] fifth member of the commission as vacancies in that seat occur.

(d) [UPON SELECTION OF THE COMMISSION'S FIFTH MEMBER, THE COMMISSION'S FOUR MEMBERS SELECTED UNDER (b) OF THIS SECTION SHALL DRAW LOTS TO DETERMINE

THE LENGTH OF THEIR TERMS OF OFFICE SO THAT ONE COMMISSION MEMBER SERVES ONE YEAR, ONE SERVES TWO YEARS, ONE SERVES THREE YEARS AND ONE SERVES FOUR YEARS. HOWEVER, THE TERMS OF NO TWO COMMISSION MEMBERS WHO ARE MEMBERS OF THE SAME POLITICAL PARTY MAY EXPIRE IN CONSECUTIVE YEARS. THE TERM OF OFFICE OF THE FIFTH MEMBER, APPOINTED UNDER (c) OF THIS SECTION, EXPIRES IN THE FIFTH YEAR.] Terms of office of the [INITIAL APPOINTEES TO THE] commission members [, INCLUDING THE FIFTH MEMBER,] shall date from February 1 [BEFORE THEIR APPOINTMENT]. The terms of no two commission members who are members of the same political party may expire in consecutive years. [AFTER THE TERMS OF OFFICE OF THE INITIAL APPOINTEES TO THE COMMISSION EXPIRE,] The [THE] term of office of a member of the commission is five years, or until his successor is appointed and qualifies. No commission member may serve more than one term. However, initial appointees to the commission who do not serve a full five-year term and a person appointed to fill the unexpired term of his predecessor may be appointed to a successive full five-year term.

(f) Members of the commission shall receive compensation of $50 a day while attending commission meetings or tending to authorized commission business and shall be entitled to travel expenses and per diem authorized by law for members of other boards and commissions.

* Sec. 3. AS 15.13.020(j) and (k) are repealed and re-enacted to read:

(j) The commission shall establish an office in each senate district in the state; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. All forms and pertinent material which are necessary for compliance with the law shall be made available to candidates, groups, persons and individuals at the commission's central and district offices and other places the commission deems appropriate. As pertains to candidates for state elective office and state ballot propositions or questions, all reports or statements required to be filed

under this chapter shall be filed with the commission's central office. As pertains to candidates for municipal elective office and municipal ballot propositions and questions, all reports required to be filed under this chapter shall be filed with either the commission's central office or the respective municipality in a manner prescribed by the commission. In all instances, the official records shall be maintained in the commission's central office.

(k) Copies of all reports and statements filed with the commission shall promptly be made available for inspection by the public in the commission's central office and in the commission's district offices and municipalities as follows:

(1) copies of all reports and statements shall be made available in all district offices

(A) which are filed by candidates for statewide offices, and

(B) which are filed by groups, or the state or an instrumentality of the state, who support or oppose candidates for statewide office of statewide ballot propositions and questions;

(2) copies of all reports and statements shall be made available in the appropriate district offices

(A) which are filed by candidates for legislative office in that district, and

(B) which are filed by groups who support or oppose candidates for legislative office in that district; and

(3) copies of all reports and statements shall be made available in the appropriate municipality

(A) which are filed by candidates for municipal office in that municipality, and

(B) which are filed by groups or municipalities who support or oppose candidates for municipal office in that municipality or municipal

ballot propositions or questions in that municipality.

* Sec. 4. AS 15.13.030(2), (4), (6), (7) and (9) are amended to read:

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, persons, and individuals in complying with the requirements of this chapter;

(4) compile and maintain a current list of all [FILED] reports and statements filed under this chapter;

(6) notify, by registered or certified mail, all candidates, groups, persons, or individuals who are delinquent in filing reports and statements required to be made under this chapter;

(7) report to the office of the attorney general the names of all candidates, groups, persons or individuals who have failed to cure their delinquency within 30 days after notification of delinquency under (6) of this section [REPORT WITHIN 60 DAYS AFTER THE ELECTION THE NAMES OF ALL PERSONS AND GROUPS WHO HAVE FAILED TO COMPLY WITH ANY OF THE PROVISIONS OF THE CHAPTER TO THE OFFICE OF THE ATTORNEY GENERAL];

(9) prepare and publish an annual report to the legislature concerning the activities of the commission, the effectiveness of AS 24.45, AS 39.50 and this chapter, their [ITS] enforcement by the office of the attorney general [GENERAL'S OFFICE], and recommendations and proposals for changes, which shall be made available to the legislature, governor, and to the public within 30 days after the convening of the legislature;

* Sec. 5. AS 15.13.030 is amended by adding a new subsection to read:

(11) retain reports and statements required to be filed under this chapter for a period of six years.

* Sec. 6. AS 15.13.040 is repealed and re-enacted to read:

Sec. 15.13.040. CONTRIBUTIONS, EXPENDITURES AND SUPPLYING OF SERVICES TO BE REPORTED. (a) Each candidate shall make a full report, upon a form prescribed

by the commission, which shall be filed in accordance with sec. 110 of this chapter and shall be certified correct by the candidate or campaign treasurer. The report shall contain the following:

(1) the total amount of all contributions of $100 or less, all funds contributed by the candidate himself, and for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor; and

(2) the date and amount of each expenditure, along with the check number, name and address of the payee, and the purpose for which the expenditure was made.

(b) Each group shall make a full report, upon a form prescribed by the commission, which shall be filed in accordance with sec. 110 of this chapter and shall be certified correct by the group's treasurer or chairman. The report shall contain the following:

(1) the total amount of all contributions of $100 or less, and for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor; and

(2) the date and amount of each expenditure, including all contributions made by the group, along with the check number, name and address of the payee, and the purpose for which the expenditure was made.

(c) Every individual or person making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, which shall be filed in accordance with sec. 110 of this chapter and shall be certified correct by the individual or person making the contribution or expenditure. The report shall contain the following:

(1) any contribution of cash, goods or services valued at more than $250 in the aggregate a year to any candidate or group, along with the name, address, principal occupation, and employer of the individual or person making the contribution; and

(2) the date and amount of any expenditure whatsoever for advertising in the newspapers, on radio or television, or for the publication, distribution or circulation of brochures, flyers, or other campaign material for or against any candidate or ballot proposition or question, along with the check number, name and address of payee, and the purpose for which the expenditure was made.

(d) All businesses, persons, or groups which furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio or television advertising, printing, billboards, advertising agency services, media production or preparation, public opinion polls, research and professional campaign consultation or management, secretarial services, or computer services. The supplier of services shall file a report, on a form prescribed by the commission, of the complete record of each transaction with each candidate or group to whom he provides services, facilities or supplies in excess of $250 in the aggregate a year. The report shall be filed in accordance with sec. 110 of this chapter and shall be certified correct by the person filing the report on behalf of the business, person or group. Businesses, persons or groups supplying services noted in this section to a candidate or group shall maintain their records in such a manner as to be readily identifiable and these records shall be available for inspection by the commission upon request of the commission.

* Sec. 7. AS 15.13.045(a), (b) and (c) are amended to read:

(a) The commission may conduct investigations, issue subpoenas, administer oaths, and hold hearings [AND CONDUCT INVESTIGATIONS] which are necessary to carry out the responsibility of the commission under this chapter, AS 24.45, and AS 39.50.

(b) In conjunction with (a) of this section, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by this chapter, AS 24.45, and AS 39.50.

(c) The commission may examine the papers, books, records, accounts and documents of any person subject to this chapter, AS 24.45, and AS 39.50 to ascertain the correctness of a report filed with the commission, or in conjunction with an investigation or inspection conducted under (a) of this section.

* Sec. 8. AS 15.13.050 is amended to read:

Sec. 15.13.050. GROUPS. (a) Each group, before making a contribution to a candidate or an expenditure on behalf of, or in opposition to, a candidate or a ballot proposition or question [CONTRIBUTION TO A CANDIDATE], shall register with the commission, on a form [FORMS] provided by the commission[, WITH THE COMMISSION]. The name of each officer and director of the group shall be included on the registration form.

(b) If the group intends to support or oppose only one candidate, or to contribute to or expend on behalf of or in opposition to, one candidate 50 per cent or more of its funds, the name of the candidate shall be a part of the name of the group.

(c) A group that receives contributions or makes expenditures with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate. Promptly upon receiving the registration of a group whose major purpose is to further the nomination, election, or candidacy of only one person, or which intends to expend more than 50 per cent of its money on a single candidate, the commission shall notify the candidate of the group's organization and intent. The group shall be considered to be controlled by that candidate and its

actions done with his knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control. A group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by the candidate.

* Sec. 9. AS 15.13.060(b), (c), (d) and (f) are amended to read:

(b) In addition, each group shall appoint a chairman, which, in the case of an ongoing group, shall be the duly elected or appointed chairman or president. Each group shall file the name and address of its chairman and campaign treasurer with the commission at the time it registers with the commission under §50 of this chapter.

(c) Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. [THE NAME OF THE CANDIDATE MAY BE PLACED ON THE BALLOT BY THE LIEUTENANT GOVERNOR OR MUNICIPAL CLERK ONLY IF THE CANDIDATE HAS COMPLIED WITH THIS SUBSECTION.]

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION.]

(f) The candidate is responsible for the performance of his campaign treasurer, and any default or violation by the treasurer also shall be considered a default or violation by the candidate [IF HE KNEW OR HAD REASON TO KNOW OF THE DEFAULT OR VIOLATION].

* Sec. 10. AS 15.13.060 is amended by adding a new subsection to read:

(g) The principal officers of a group are responsible for the performance

of the group's campaign treasurer, and any default or violation by the campaign treasurer also shall be considered a default or violation by the principal officers of the group.

* Sec. 11. AS 15.13.070(a), (b) and (d) are amended to read:

(a) No individual, person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute [TO OR EXPEND] more that $1,000 a year to a candidate [ON BEHALF OF OR IN OPPOSITION TO THE COMPETING CANDIDATES] for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by §10(b) and 110 of this chapter. Nothing in this chapter prohibits

(1) a candidate from contributing more than $1,000 of his own money to his own campaign; or

(2) individuals, persons or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than $1,000 a year; however, these contributions and expenditures shall be reported in accordance with §10 and 110 of this chapter.

(b) No contribution over $100 may be made in cash or by cash payment and it may not be accepted by or on behalf of a candidate or group.

(d) No contribution may be made, and no expenditure may be made or incurred, directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name of another, to influence the election of a candidate or the outcome of an ballot proposition or question in an election. A contribution made by a person wishing to remain anonymous, and received by a candidate, or his campaign treasurer or deputy campaign treasurer, or a group may not be used or expended, but shall be returned to the donor, if his identity

is known, and if no donor is found, the contribution escheats to the state if not donated by the candidate or group to the charity of their [HIS] choice.

* Sec. 12. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, person or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign treasurer, except when a candidate is his own campaign treasurer.

* Sec. 13. AS 15.13.100 is amended to read:

Sec. 15.13.100. CONTRIBUTIONS, EXPENDITURES BEFORE FILING. Political [NO POLITICAL] campaign contributions or expenditures, [EXPENDITURE MAY BE MADE] or obligations for those expenditures, may be received or accepted and made or incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks [, EXCEPT FOR PERSONAL TRAVEL EXPENSES OR FOR OPINION SURVEYS OR POLLS]. However, these contributions or [THESE] expenditures [SHALL BE CHARGED AGAINST THE SPENDING LIMITATION THAT APPLIES TO THE OFFICE FOR WHICH HE SUBSEQUENTLY FILES, AND] shall be included in the first report required under this chapter [AFTER FILING FOR OFFICE].

* Sec. 14. AS 15.13.110(a)(4), (b), and (c) are amended to read:

(a)(4) December 31 [OF EACH YEAR] for expenditures made and contributions received after the report required in (3) of this section and in a non-election year those expenditures made and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 and which is made within 10 days [ONE WEEK] of the election shall be reported to the commission

by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or his campaign treasurer or by a group.

(c) The reports and statements required under this chapter [OF CANDIDATES] shall be filed in accordance with sec. 20(j) of this chapter [WITH THE COMMISSION'S CENTRAL OFFICE] and shall be considered as having been received timely if postmarked no later than the due date. All statements, records and reports required by this chapter are public records and shall be kept open for [TO] public inspection. Within 30 days after each election, the commission shall prepare a summary of reports [EACH REPORT] which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 15. AS 15.13.110 is amended by adding two new sections to read:

(e) Within 10 days after making a contribution or expenditure in accordance with sec. 40(c) of this chapter, every individual or person shall file a report with the commission.

(f) A candidate who does not plan to receive contributions or make any expenditures during his campaign for elective office may file an affidavit to that effect with the commission, on a form prescribed by the commission, at the time the first report is due to be filed under (a) of this section. If, after filing an affidavit, a candidate does in fact receive a contribution or make an expenditure he shall report as otherwise required by this chapter.

* Sec. 16. AS 15.13.120(a)(2) and (5) are amended to read:

(2) making a campaign contribution [OR EXPENDITURE] which exceeds the limitations of sec. 70[(f)] of this chapter.

(5) making a communication to support or defeat a candidate or ballot proposition or question without identification of sponsorship, in violation of sec. 90 of this chapter;

* Sec. 17. AS 15.13.125 is amended to read:

Sec. 15.13.125. CIVIL PENALTY: LATE FILING OF REPORTS. A person who fails to file a properly completed and certified report within the time required by sec. 50(a), 60(c), 110(a)(1), (3), (4) or 110(d) of this chapter is subject to a civil penalty of not more than $10 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by sec. 110(a)(2) or 110(b) of this chapter is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in sec. 120 of this chapter does not excuse that person from filing reports required by this chapter.

* Sec. 18. AS 15.13.130(2), (3), and (4) are amended to read:

(2) "contribution" means purchase, payment, or promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in §10(b) of this chapter for the purpose of influencing a ballot proposition or question, including the payment by a person other other than a candidate or political party of [, OR] compensation for [OF] the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services

volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

(D) a personal loan from a bona fide lending institution;

(3) "group" means every state and regional executive committee of a political party, any political action committee, and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; however, a "group" does not include

(A) a candidate's personal campaign committee; or

(B) ongoing business, trade, union, or membership associations or organizations provided that their major purpose is not to influence the outcome of an election and provided that the money for any contributions or expenditures are appropriated from the general fund of such associations or organizations;

| A GROUP THAT MAKES EXPENDITURES OR RECEIVES CONTRIBUTIONS WITH THE AUTHORIZATION OR CONSENT, EXPRESS OR IMPLIED, OR UNDER THE CONTROL, DIRECT OR INDIRECT, OF A CANDIDATE SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE; A GROUP WHOSE MAJOR PURPOSE IS TO FURTHER THE NOMINATION, ELECTION, OR CANDIDACY OF ONLY ONE PERSON, OR INTENDS TO EXPEND MORE THAN 50 PER CENT OF ITS MONEY ON A SINGLE CANDIDATE, SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE AND ITS ACTIONS DONE WITH HIS KNOWLEDGE AND CONSENT UNLESS, WITHIN 10 DAYS FROM THE DATE THE CANDIDATE LEARNS OF THE EXISTENCE OF THE GROUP HE FILES WITH THE COMMISSION, ON A FORM PROVIDED BY THE COMMISSION, AN AFFIDAVIT THAT THE GROUP IS OPERATING WITHOUT HIS CONTROL; A GROUP ORGANIZED FOR MORE THAN ONE YEAR PRECEDING AN ELECTION AND ENDORSING CANDIDATES FOR MORE THAN ONE OFFICE OR

MORE THAN ONE POLITICAL PARTY IS PRESUMED NOT TO BE CONTROLLED BY A CANDIDATE; HOWEVER, A GROUP THAT CONTRIBUTES MORE THAN 50 PER CENT OF ITS MONEY TO OR ON BEHALF OF ONE CANDIDATE SHALL BE CONSIDERED TO SUPPORT ONLY ONE CANDIDATE FOR PURPOSES OF §70 OF THIS CHAPTER, WHETHER OR NOT CONTROL OF THE GROUP HAS BEEN DISCLAIMED BY THE CANDIDATE;]

(4) "expenditure" means a purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for (A) the purpose of [(A)] influencing the nomination or election of a candidate or any individual who files for nomination at a later date and becomes a candidate; [OR] (B) use by a political party; [OR] (C) the payment by a person other than a candidate or political party of compensation for the personal services of another person which are rendered to a candidate or political party; or (D) the purpose of influencing the outcome of a ballot proposition or question; however, "expenditure" does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

* Sec. 19. AS 15.13.030 is amended by adding two new subsections to read:

(8) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska Housing Authority;

(9) "political committee" means a candidate's campaign committee or any group under the control of the candidate as defined in sec. 50 of this chapter.

* Sec. 20. AS 15.13.070(f) and (g) and AS 15.13.080 are repealed.

HB
405

4/25/77

SB SB
AB 405

Brown
address situation in FAI
not personal ~~for~~ friendship

says very ~~exp~~ experienced magistrate
may be considered for district court
judgeships.

Snowden
Supreme Court opposes the bill
should increase the requirements

California –
non-lawyer trained judges
can't sentence people to jail

AK
right to waive magistrate

1610
Miles appears Takes over ~~Bar~~ chair

Fred moves the bill Fails.
For 3 Against 3

House Judiciary
April 25, 1977

The meeting was called to order at 3:25 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Eliason, Rudd and Brown. Miles came late. Mr. Specking is no longer a member of the Judiciary Committee.

HP 174 Right of persons to bring criminal accusations to the attention of the grand jury. HB 174

Dan Hickey from the Criminal Division of the A.G.'s office was here to testify. He indicated his feeling that the access to the grand jury on the part of the citizens in Alaska is adequate. He indicated that the problem with this bill is that it would encourage people to go directly to the grand jury... it is felt that this is not necessary; and such public access could cause for several ambiguous relationships. Hickey indicated a further problem with the bill in that it doesn't explain how a person would have access to the grand jury. Hickey feels that person to person contact with a grand jury could lead to all sorts of problems.If public access to the grand jury is going to be approved, Hickey feels that it should be very specific.

Larry Weeks, District Attorney, also testified in oppostion to the bil He expecially objects to section (b).

Mr. Dankworth, who is a cosponsor for this bill, spoke about it. He feels that a major complaint of the public is the lack of input that they have. He feels that this bill would open a door for people who would like to appear before the grand jury.(Rather than being referred from policeman to D.A. to attorney, etc., etc.) Dankworth feels that if the D.A. doesn't want to take the case before the grand jury, the individual is out of luck.

Fred Brown mentioned some ideas that he would propose as amendments when the committee got around to marking up the bill.

This bill will be considered again at a later date.

HB 405 Providing for the qualification of district judges HB 405

Fred Brown spoke regarding this bill for which he is a sponsor. He explained what the bill would do.

Art Snowden from the Court System was here to testify in opposition to the bill. The court system feels that the qualifications of district court judges should be increased..Apparently this bill originated as a result of a magistrate in Brown's district who probably would be qualified to serve as a district court judge. Although this may be true of this particular magistrate, it is

probably not true of all magistrates. In light of the fact that the court system is trying to improve the judiciary, they feel that this bill would be a step in the wrong direction in that it would be a lessening of the qualifications.

In response to a question by Rudd, Snowden indicated that the present requirements for a magistrate are that he be picked by the presiding judge; the present requirements for a district court judge are that he be a member of the bar.

Brown moved that HB 405 be moved out of committee. The vote was 3-3 so the motion failed on a tie vote. The bill will remain in committee.

The meeting was adjourned at 4:30 p.m.

HB
419

Peggy Burke

1. Object to changing 20.15.060
2. Section 4
3. Section 11 – Move

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
165 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

MEMORANDUM

TO: Hon, Terry Gardiner, Chairman, and Members of (H) Judiciary Committee

FROM: Peggy Berck, ALSC

DATE: March 27, 1978

RE: H.B. 419, "An Act Relating to Adoption and Voluntary Reglinquishment of Parental Rights."

1. Summary

H.B. 419, in essence, provides for three basic statutory changes to current Alaska law.[1] First, it revises and clarifies the method for consenting to the adoption of a minor. The most significant change in this area is that the period for withdrawing such consent has been lengthened from 10 days to at least 30 days. Second, it amends the provisions requiring notice of the adoption petition by deleting the prohibition against employing publication as a means of notice. Third, it clarifies and revises the procedure by which one may relinquish his or her parental rights and responsibilities. Although further amendments are necessary to accomplish the intent of H.B. 419, ALSC supports the objectives sought in this Legislation.

II. Rationale for Statutory Changes Embodied in H.B. 419

Section 2 of H.B. 419 specifies how consent to adoption may be executed and what must be contained in such a consent instrument. Consents are valid whether or not they identify the adopting parent, however, the consenting person is provided with the right to demand such identification. A small faction of ALSC clients desire the ability to execute blank consents. They do not wish to know by whom their child is to be adopted.[2]

1 I have not included any discussion pertaining to the Adoption Assistance provisions contained in Sections 6 -9 of H.B. 419.

2 This fact is evident from the some 200 Adoption cases handled by ALSC last year.

The Children's Code Task Force took the position that all consents must identify the adoptive parent in order to be valid. The basis for this position was that the consenting person might have the opportunity to determine the suitability of the adopting parent. Obviously this rationale is only valid in those cases where the consenting person knows the adopting parent. Even in Alaska, this element would not be present in every case.

A similar position was espoused by the National Association of Social Workers at the (H) Judiciary Committee hearing on this bill. The rationale for their position was that blank consents foster private adoptions which are recognized in Alaska.

If abuses are occurring in the private adoption situation, it would seem that a better approach would be to illegalize [3] such adoptions rather than curtail the individual right to grant a blank consent.

The provisions establishing what must be co tained in the consent instrument are good since persons frequently do not understand their rights in the adoption process or the meaning of their consent. However under current Alaska law (see Sec 20.1 .050(b) and Sec.20.15.100(a)(2)) once a person has consented to an adoption he is no longer entitled to notice of the hearing on the adoption. Without some provision for notice, the consenting person will not be able to effect his right to appear at the Adoption Hearing. Furthermore should the consenting person desire to withdraw his consent prior to the hearing, unless he is informed of the hearing date he will be unaware of that actual time frame other than the 30 day period set forth in H.B. 419. Additionally it seems that unless the consenting party is informed at the time of consent as to how he or she might withdraw his or her consent it is in reality a meaningless right. The consenting person at the time of consent should be informed of his or her ability to withdraw consent by means of writing a letter to the court prior to the hearing or petitioning the court upon good cause shown once the hearing has commenced. It is equally apparent that the consenting person must be informed as to which court the adoption petition has been filed in or is contemplated to be filed in if this right is to be of any substance.

3 The vast majority of states have taken this direction.

Section 3 of H.B. 419 amends the procedure by which one may withdraw his or her consent. This provision allows the consenting person to withdraw his or her consent for any reason prior to the first adoption hearing.

Because this hearing cannot be scheduled until at least 30 days have lapsed since the consent was granted, the effect of this provision is to lengthen the time period for retraction of consent from 10 days to 30 days. Since the adoption degree terminates the consenting person's rights to the child, this extention is a desirable statutory change. It is particularly important for those persons residing in the bush who may find it difficult to retract their consent within the current 10 day time period.

Additionally, this provision permits the consenting person to petition the Court to withdraw his or her consent even after the adoption hearing has commenced. Here, however, the consenting person must show good cause for withdrawing his or her ocnsent.

Since it is the intent of H.B. 419 that the consenting person be able to withdraw his or her consent for any reason prior to the hearing, clarification of this fact is probably desirable. For that reason it is suggested that line 1 and line 14 on page two (2) of the bill be amended to read: "...draw his consent at any time for any reason before the adoption hearing or after com- ..." and "(b) A consent to adoption may be withdrawn for any reason before the first..." [4]

Sec. 4 of H.B. 419 deletes the prohibition with respect to accomplishing notice by means of publication. The Children's Code Task Force advocated this change for two reason. First, since adoption proceedings drastically alter parent-child relationships due process of law necessitates those persons affected with as much notice as possible. It would seem that the due process rights involved here would outweigh any intrusion on the persons privacy rights.

4
Similar language is contained in the "Indian Child Welfare Bill," s1214, currently before the U.S. Congress

Second, some Alaska Courts have not given any effect to the sentence sought to be deleted. Thus, some courts have in fact required publication. The basis for avoiding this statutory provision is that the legislative bill(H.B. 70) which became the present adoption law in 1974 did not expressly state that this sentence would change children's Rule 10 (g) which mandates publication in certain circumstances. Thus pursuant to Rule 40 (e) of the Uniform Rules of the Alaska State Legislature the sentence is without effect.

ALSC agrees with the rationale of the Task Force on this point and supports this statutory change.

Current Alaska law on the relinquishment of parental rights is contained in AS 20.15.180. Those provisions are confusing in that they intermingle discussion of involuntary termination of parental rights and furthermore imply that relinquishment must occur in conjunction with a adoption proceeding. Because of these problems, the revision contained in Sec 12 of H.B. 419 is desirable.

The first portion of Sec. 12 of H.B. 419 provides that a parent may petition the court or its duly authorized representative to voluntarily relinquish his or her parental rights and responsibilities. The phrase, "duly authorized representative" was intened by the Children's Code Task Force to refer to magistrates so that persons in rural areas would have access to this procedure.

As H.B. 419 currently reads, it does not seem that this goal will be accomplished. First, the functions and powers of magistrates are contained in AS 22.15.100, AS 22.15.110. and AS 22.15.120. It would not appear to be proper to enlarge those duties without some amendment to those provisions.[5] Additionally pursuant to AS 22.10.020 the Superior Court would seem to have exclusive jurisdiction over matters of this kind, However, once the Superior Court has received the petition it could appoint the local magistrate to act as a master and to hear the petition and to make findings of fact and conclusions of law. This is specifically provided for in Alaska Rule of Court, Rule 53. Since this

[5] Undoubtedly certain court rules would also be affected and thereby would have to be addressed as well.

procedure is generally obtained by a specific motion raised by one of the parties, it seems that a person would in effect have little chance to successfully get past this procedural morass without an attorney.

III. Miscelloneous Concerns of the Committee.

1. Applicable federal law in the adoption area has been recently enunciated in Quilloin v Walcott, U.S. , 46 LW 4055, (Jan. 10,1978). In essence this Supreme Court decision held that is was not a violation of due process or equal protection for a state to preclude the necessity of consent to an adoption by an unwed father. Although the case was limited to a narrow set of facts, i.e.,the unwed father had never sought or had legal custody of the child and the proposed adoption would not place the child with a new set of parents with whom the child had not lived, it would not appear to require any revision of current Alaska Law or H.B. 419. A copy of that decision is attached hereto for your information.

2. Putative father is defined in Black's Law Dictionary as : "the alleged or reputed father of an illegitimate child."

3. The Indian Child Welfare Bill is currently being considered by the U.S. Congress and will drastically affect adoptions of Alaska Native children. Although I understand the bill has been revised, I have attached a copy of the original bill hereto.

MB/lp

Enclosures

The United States
LAW WEEK

Supreme Court
Opinions

January 10, 1978 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 46, No. 26

OPINIONS ANNOUNCED JANUARY 10, 1978

The Supreme Court decided:

CRIMINAL LAW AND PROCEDURE—Appeals

District court's reliance on state court record in ruling on habeas corpus petition discharges its duty under 28 U.S.C. §2243 to hear and determine facts, and its failure to hold evidentiary hearing does not render its judgment on such petition nonfinal for purposes of appeal under 28 U.S.C. §2253; Fed.R.Civ.P. 52 (b) and 59, which establish 10-day time limit for filing of motions for amended or additional findings and for new trial or amended judgment are applicable to habeas corpus proceedings; untimely motion requesting district court to stay execution of writ of habeas corpus and to conduct evidentiary hearing does not toll Fed.R.App. 4 (a)'s 30-day time limit for filing notice of appeal in civil case. (Browder v. Director, Department of Corrections, No. 76-5325) ..... page 4058

DOMESTIC RELATIONS—Adoption

Unwed father's substantive due process rights were not violated by Georgia court's grant, over father's objection and without finding that he was unfit parent, of adoption petition brought by mother's husband on ground that adoption was in "best interests of child"; Georgia statutory scheme that gives fit fathers of legitimate children authority to veto adoption without giving same veto authority to fathers of illegitimate children does not violate Equal Protection Clause. (Quilloin v. Walcott, No. 76-6372) ..... page 4055

ENVIRONMENTAL LAW—Air

Clean Air Act Section 307 (b), which limits judicial review of emission standards promulgated under Section 112 to Court of Appeals for D.C. Circuit and precludes challenge to validity of such standards in civil or criminal enforcement proceedings, does not bar defense to Section 113 criminal prosecution that clean air regulation allegedly violated is not "emission standard" within meaning of Section 112 (c), even though "emission standard" in question has not been previously reviewed under provisions of Section 307 (b); EPA regulation specifying procedures to be followed in connection with building demolition but not establishing quantitative levels for asbestos emissions occurring during demolition is not "emission standard" within meaning of Section 112 (c) and thus its violation is not criminal offense under Section 113. (Adamo Wrecking Co. v. U.S., No. 76-911) ..... page 4063

Full Text of Opinions

No. 76-6372

Leon Webster Quilloin, Appellant, v. Ardell Williams Walcott et al. | On Appeal from the Supreme Court of Georgia,

[January 10, 1978]

Syllabus

Under Georgia law no adoption of a child born in wedlock is permitted without the consent of each living parent (including divorced or separated parents) who has not voluntarily surrendered rights in the child or been adjudicated an unfit parent. In contrast, §§ 74-403 (3) and 74-203 of the Georgia Code provide that only the mother's consent is required for the adoption of an illegitimate child. However, the father may acquire veto authority over the adoption if he has legitimated the child pursuant to § 74-103 of the Code. These provisions were applied to deny appellant, the father of an illegitimate child, authority to prevent the adoption of the child by the husband of the child's mother. Until the adoption petition was filed, appellant had not attempted to legitimate the child, who had always been in the mother's custody and was then living with the mother and her husband, appellees. In opposing the adoption appellant, seeking to legitimate the child but not to secure custody, claimed that §§ 74-203 and 74-403 (3), as applied to his case, violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The trial court, granting the adoption on the ground that it was in the "best interests of the child" and that legitimation by appellant was not, rejected appellant's constitutional claims, and the Georgia Supreme Court affirmed. *Held:*

1. Under the circumstances appellant's substantive rights under the Due Process Clause were not violated by application of a "best interests of the child" standard. This is not a case in which the unwed father at any time had, or sought, custody of his child or in which the proposed adoption would place the child with a new set of parents with whom the child had never lived. Rather, the result of adoption here is to give full recognition to an existing family unit.

2. Equal protection principles do not require that appellant's authority to veto an adoption be measured by the same standard as is applied to a divorced father, from whose interests appellant's interests are readily distinguishable. The State was not foreclosed from recognizing the difference in the extent of commitment to a child's welfare between that of appellant, an unwed father who has never shouldered any significant responsibility for the child's rearing, and that of a divorced father who at least will have borne full responsibility for his child's rearing during the period of marriage.

238 Ga. 230, 232 S. E. 2d 246, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is the constitutionality of Georgia's adoption laws as applied to deny an unwed father authority to prevent adoption of his illegitimate child. The child was born in December 1964 and has been in the custody and control of his mother, appellee Ardell Williams Walcott, for his entire life. The mother and the child's natural father, appellant Leon Webster Quilloin, never married each other or established a home together, and in September 1967 the mother married appellee Randall Walcott.[1] In March 1976, she consented to adoption of the child by her husband, who immediately filed a petition for adoption. Appellant attempted to block the adoption and to secure visitation rights, but he

[1] The child lived with his maternal grandmother for the initial period of the marriage, but moved in with appellees in 1969 and lived with them thereafter.

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did not seek custody or object to the child's continuing to live with appellees. Although appellant was not found to be an unfit parent, the adoption was granted over his objection.

In *Stanley* v. *Illinois*, 405 U. S. 645 (1972), this Court held that the State of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent. The Court concluded, on the one hand, that a father's interest in the "companionship, care, custody and management" of his children is "cognizable and substantial," *id.*, at 651–652, and, on the other hand, that the State's interest in caring for the children is "*de minimis*" if the father is in fact a fit parent, *id.*, at 657–658. *Stanley* left unresolved the degree of protection a State must afford to the rights of an unwed father in a situation, such as that presented here, in which the countervailing interests are more substantial.

I

Generally speaking, under Georgia law a child born in wedlock cannot be adopted without the consent of each living parent who has not voluntarily surrendered rights in the child or been adjudicated an unfit parent.[2] Even where the child's parents are divorced or separated at the time of the adoption proceedings, either parent may veto the adoption. In contrast, only the consent of the mother is required for adoption of an illegitimate child. Ga. Code Ann. § 74-403 (3) (1973).[3] To acquire the same veto authority possessed by other parents, the father of a child born out of wedlock must legitimate his offspring, either by marrying the mother and acknowledging the child as his own, § 74-101, or by obtaining a court order declaring the child legitimate and capable of inheriting from the father, § 74-103.[4] But unless and until the child is legitimated, the mother is the only recognized parent and is given exclusive authority to exercise all parental prerogatives, § 74-203,[5] including the power to veto adoption of the child.

Appellant did not petition for legitimation of his child at any time during the 11 years between the child's birth and the filing of Randall Walcott's adoption petition.[6] However, in response to Walcott's petition, appellant filed an application for a writ of habeas corpus seeking visitation rights, a petition for legitimation, and an objection to the adoption.[7] Shortly thereafter, appellant amended his pleadings by adding the claim that §§ 74-203 and 74-403 (3) were unconstitutional as applied to his case, insofar as they denied him the rights granted to married parents, and presumed unwed fathers to be unfit as a matter of law.

The petitions for adoption, legitimation, and writ of habeas corpus were consolidated for trial in the Superior Court of Fulton County, Ga. The court expressly stated that these matters were being tried on the basis of a consolidated record to allow "the biological father . . . a right to be heard with respect to any issue or other thing upon which he desire[s] to be heard, including his fitness as a parent. . . ."[8] After receiving extensive testimony from the parties and other witnesses, the trial court found that, although the child had never been abandoned or deprived, appellant had provided support only on an irregular basis.[9] Moreover, while the child previously had visited with appellant on "many occasions," and had been given toys and gifts by appellant "from time to time," the mother had recently concluded that these contacts were having a disruptive effect on the child and on appellees' entire family.[10] The child himself expressed a desire to be adopted

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[2] See Ga. Code Ann. §§ 74-403 (1), (2) (1973). Section 74-403 (1) sets forth the general rule that "no adoption shall be permitted except with the written consent of the living parents of a child." Section 74-403 (2) provides that consent is not required from a parent who (1) has surrendered rights in the child to a child-placing agency or to the adoption court; (2) is found by the adoption court to have abandoned the child, or to have willfully failed for a year or longer to comply with a court-imposed support order with respect to the child; (3) has had his or her parental rights terminated by court order, see Ga. Code Ann. § 24A-3201; (4) is insane or otherwise incapacitated from giving consent; or (5) cannot be found after a diligent search has been made.

[3] Section 74-403 (3), which operates as an exception to the rule stated in § 74-403 (1), see n. 2, *supra*, provides:

"Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the Department of Human Resources."

Sections of Ga. Code Ann. (1973) will hereinafter be referred to merely by their numbers.

[4] Section 74-103 provides in full:

"A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, setting forth the name, age, and sex of such child, and also the name of the mother; and if he desires the name changed, stating the new name, and praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child to be legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known."

[5] Section 74-203 states:

"The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal [*sic*] power."

In its opinion in this case, the Georgia Supreme Court indicated that the word "paternal" in the second sentence of this provision is the result of a misprint, and was instead intended to read "parental." *See Quilloin* v. *Walcott*, 238 Ga. 230, 231, 232 S. E. 2d 246, 247 (1977).

[6] It does appear that appellant consented to entry of his name on the child's birth certificate. See § 88-1709 (d) (2). The adoption petition gave the name of the child as "Darrell Webster Quilloin," and appellant alleges in his brief that the child has always been known by that name, see Brief of Appellant, at 11.

[7] Appellant had been notified by the State's Department of Human Resources that an adoption petition had been filed.

[8] *In re: Application of Randall Walcott for Adoption of Child*, Adoption Case No. 8466 (Ga. Super. Ct., July 12, 1976), App. 70.

Sections 74-103, 74-203, and 74-403 (3) are silent as to the appropriate procedure in the event that a petition for legitimation is filed after an adoption proceeding has already been initiated. Prior to this Court's decision in *Stanley* v. *Illinois*, 405 U. S. 645 (1972), and without consideration of potential constitutional problems, the Georgia Supreme Court had concluded that an unwed father could not petition for legitimation after the mother had consented to an adoption. *Smith* v. *Smith*, 224 Ga. 442, 445-446, 162 S. E. 2d 379, 383-384 (1968). But cf. *Clark* v. *Buttry*, 226 Ga. 687, 177 S. E. 2d 89, aff'g 121 Ga. App. 492, 174 S. E. 2d 356 (1970). However, the Georgia Supreme Court had not had occasion to reconsider this conclusion in light of *Stanley*, and, in the face of appellant's constitutional challenge to §§ 74-203, 74-403 (3), the trial court evidently concluded that concurrent consideration of the legitimation and adoption petitions was consistent with the statutory provisions. See also Tr. of Hearing before Superior Ct., App. 34, 51; n. 12, *infra*.

[9] Under § 74-202, appellant had a duty to support his child, but, for reasons not appearing in the record the mother never brought an action to enforce this duty. Since no court ever ordered appellant to support his child, denial of veto authority over the adoption could not have been justified on the ground of willful failure to comply with a support order. See n. 2, *supra*.

[10] In addition to Darrell, appellees' family included a son born several years after appellees were married. The mother testified that Darrell's visits with appellant were having unhealthy effects on both children.

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by Randall Walcott and to take on Walcott's name," and the court found Walcott to be a fit and proper person to adopt the child.

On the basis of these findings, as well as findings relating to appellees' marriage and the mother's custody of the child for all of the child's life, the trial court determined that the proposed adopti[illegible]s in the "best interests of [the] child." The court concluded, further, that granting either the legitimation or the visitation rights requested by appellant would not be in the "best interests of the child," and that both should consequently be denied. The court then applied §§ 74-203 and 74-403 (3) to the situation at hand, and, since appellant had failed to obtain a court order granting legitimation, he was found to lack standing to object to the adoption. Ruling that appellant's constitutional claims were without merit, the court granted the adoption petition and denied the legitimation and visitation petitions.

Appellant took an appeal to the Supreme Court of Georgia, claiming that §§ 74-203 and 74-403 (3), as applied by the trial court to his case, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In particular, appellant contended that he was entitled to the same power to veto an adoption as is provided under Georgia law to married or divorced parents and to unwed mothers, and, since the trial court did not make a finding of abandonment or other unfitness on the part of appellant, see n. 2, *supra*, the adoption of his child should not have been allowed.

Over a dissent which urged that § 74-403 (3) was invalid under *Stanley* v. *Illinois*, the Georgia Supreme Court affirmed the decision of the trial court. 238 Ga. 230, 232 S. E. 2d 246 (1977).[12] The majority relied generally on the strong state policy of rearing children in a family setting, a policy which in the court's view might be thwarted if unwed fathers were required to consent to adoptions. The Court also emphasized the special force of this policy under the facts of this case, pointing out that the adoption was sought by the child's stepfather, who was part of the family unit in which the child was in fact living, and that the child's natural father had not taken steps to support or legitimate the child over a period of more than 11 years. The Court noted in addition that, unlike the father in *Stanley*, appellant had never been a *de facto* member of the child's family unit.

Appellant brought this appeal pursuant to 28 U. S. C. § 1257 (2), continuing to challenge the constitutionality of §§ 74-203 and 74-403 (3) as applied to his case, and claiming that he was entitled as a matter of due process and equal protection to an absolute veto over adoption of his child, absent a finding of his unfitness as a parent. In contrast to appellant's somewhat broader statement of the issue in the Georgia Supreme Court, on this appeal he focused his equal protection claim solely on the disparate statutory treatment of his case and that of a married father." We noted probable jurisdiction, — U. S. — (1977), and we now affirm.

II

At the outset, we observe that appellant does not challenge the sufficiency of the notice he received with respect to the adoption proceeding, see n. 7, *supra*, nor can he claim that he was deprived of a right to a hearing on his individualized interests in his child, prior to entry of the order of adoption. Although the trial court's ultimate conclusion was that appellant lacked standing to object to the adoption, this conclusion was reached only after appellant had been afforded a full hearing on his legitimation petition, at which he was given the opportunity to offer evidence on any matter he thought relevant, including his fitness as a parent. Had the trial court granted legitimation, appellant would have acquired the veto authority he is now seeking.

The fact that appellant was provided with a hearing on his legitimation petition is not, however, a complete answer to his attack on the constitutionality of §§ 74-203 and 74-403 (3). The trial court denied appellant's petition, and thereby precluded him from gaining veto authority, on the ground that legitimation was not in the "best interests of the child"; appellant contends that he was entitled to recognition and preservation of his parental rights absent a showing of his "unfitness." Thus, the underlying issue is whether, in the circumstances of this case and in light of the authority granted by Georgia law to married fathers, appellant's interests were adequately protected by a "best interests of the child" standard. We examine this issue first under the Due Process Clause and then under the Equal Protection Clause.

A

Appellees suggest that due process was not violated, regardless of the standard applied by the trial court, since any constitutionally protected interest appellant might have had was lost by his failure to petition for legitimation during the 11 years prior to filing of Randall Walcott's adoption petition. We would hesitate to rest decision on this ground, in light of the evidence in the record that appellant was not aware of the legitimation procedure until after the adoption petition was filed.[14] But in any event we need not go that far, since under the circumstances of this case appellant's substantive rights were not violated by application of a "best interests of the child" standard.

We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected. See, *e. g.*, *Wisconsin* v. *Yoder*, 406 U. S. 205, 231-233 (1972); *Stanley* v. *Illinois*, *supra*; *Meyer* v. *Nebraska*, 262 U. S. 390, 399-401 (1923). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince* v.

[11] The child also expressed a desire to continue to visit with appellant on occasion after the adoption. The child's desire to be adopted, however, could not be given effect under Georgia law without divesting appellant of any parental rights he might otherwise have or acquire, including visitation rights. See § 74-414.

[12] The Supreme Court addressed itself only to the constitutionality of the statutes as applied by the trial court and thus, at least for purposes of this case, accepted the trial court's construction of §§ 74-203, 74-403 (3), as allowing concurrent consideration of the adoption and legitimation petitions. See n. 8, *supra*.

Subsequent to the Supreme Court's decision in this case, the Georgia Legislature enacted a comprehensive revision of the State's adoption laws, which became effective January 1, 1978. [1977] Georgia Laws, p. 201. The new law expressly gives an unwed father the right to petition for legitimation subsequent to the filing of an adoption petition concerning his child. See Ga. Code Ann. § 74-406 (Cum. Supp. 1977). The revision also leaves intact §§ 74-103 and 74-203, and carries forward the substance of § 74-403 (3), and thus appellant would not have received any greater protection under the new law than he was actually afforded by the trial court.

[13] In the last paragraph of his brief, appellant raises the claim that the statutes make gender-based distinctions that violate the Equal Protection Clause. Since this claim was not presented in appellant's Jurisdictional Statement, we do not consider it. S. Ct. Rule 15 (1)(c); see, *e. g.*, *Phillips Chem. Co.* v. *Dumas Indep. School Dist.*, 361 U. S. 376, 386, and n. 12 (1960).

[14] At the hearing in the trial court, the following colloquy took place between appellees' counsel and appellant:

"Q Had you made any effort prior to this time [prior to the instant proceedings], during the eleven years of Darrell's life to legitimate him?

"A . . . I didn't know that was process even you went through [App. 58.

Massachusetts, 321 U. S. 158, 166 (1944). And it is now firmly established that "freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639-640 (1974).

We have little doubt that the Due Process Clause would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." *Smith* v. *Organization of Foster Families for Equality and Reform*, — U. S. —, — (1977) (STEWART, J., concurring). But this is not a case in which the unwed father at any time had, or sought, actual or legal custody of his child. Nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition to a family unit already in existence, a result desired by all concerned, except appellant. Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, was in the "best interests of the child."

B

Appellant contends that even if he is not entitled to prevail as a matter of due process, principles of equal protection require that his authority to veto an adoption be measured by the same standard that would have been applied to a married father. In particular, appellant asserts that his interests are indistinguishable from those of a married father who is separated or divorced from the mother and is no longer living with his child, and therefore the State acted impermissibly in treating his case differently. We think appellant's interests are readily distinguishable from those of a divorced father, and accordingly believe that the State could permissively give appellant less veto authority than it provides to a married father.

Although appellant was subject, for the years prior to these proceedings, to essentially the same child support obligation as a married father would have had, compare § 74-202 with § 74-105 and § 30-301, he has never exercised actual or legal custody over his child, and thus has never shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child. Appellant does not complain of his exemption from these responsibilities and, indeed, he does not even now seek custody of his child. In contrast, legal custody of children is of course a central aspect of the marital relationship, and even a father whose marriage has broken apart will have borne full responsibility for the rearing of his children during the period of the marriage. Under any standard of review, the State was not foreclosed from recognizing this difference in the extent of commitment to the welfare of the child.

For these reasons, we conclude that §§ 74-203, 74-403 (3), as applied in this case, did not deprive appellant of his asserted rights under the Due Process and Equal Protection Clauses. The judgment of the Supreme Court of Georgia is, accordingly,

Affirmed.

WILLIAM L. SKINNER, Decatur, Ga., for appellant; THOMAS F. JONES, Atlanta, Ga. (S. RALPH MARTIN, JR., with him on the brief) for appellees.

No. 76-5325

Ben Earl Browder, Petitioner, *v.* Director, Department of Corrections of Illinois. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January 10, 1978]

Syllabus

After unsuccessful efforts to overturn his state-court conviction on direct appeal and state collateral attack, petitioner sought a writ of habeas corpus in a Federal District Court, which on October 21, 1975, ordered his release from respondent Corrections Director's custody unless the State retried him within 60 days. The court held no evidentiary hearing, but based its order on the habeas corpus petition, respondent's "motion to dismiss," and the state-court record. Twenty-eight days after entry of the order, respondent moved for a stay of the conditional release order and for an evidentiary hearing. The District Court granted the motion, but after a hearing ruled on January 26, 1976, that the writ of habeas corpus was properly issued. Respondent immediately filed a notice of appeal seeking review of both the October 21 and January 26 orders, and the Court of Appeals reversed. Federal Rule App. Proc. 4 (a) and 28 U. S. C. § 2107 require that a notice of appeal in a civil case be filed within 30 days of entry of the judgment or order from which the appeal is taken, but under Rule 4 (a) the running of time for filing an appeal may be tolled by a timely motion filed in the district court pursuant to Fed. Rule Civ. Proc. 52 (b) or 59. *Held:* The Court of Appeals lacked jurisdiction to review the original October 21 order because respondent's motion for a stay and an evidentiary hearing (in essence a motion for rehearing or reconsideration) was untimely under Rule 52 (b) or 59 and hence could not toll the running of the "mandatory and jurisdictional" 30-day time limit of Rule 4 (a).

(a) The October 21 order was final for purposes of 28 U. S. C. § 2253, which provides for an appeal in a habeas corpus proceeding from a "final order." The District Court discharged its duty under 28 U. S. C. § 2243 "summarily [to] hear and determine the facts" by granting the habeas corpus petition on the state-court record, and the absence of an evidentiary hearing, whether error or not, did not render the release order nonfinal.

(b) Habeas corpus is a civil proceeding, and Rules 52 (b) and 59 were applicable. While the procedures set forth in the habeas corpus statutes apply during the pendency of such a proceeding and Fed. Rule Civ. Proc. 81 (a)(2) recognizes the supremacy of such procedures over the Federal Rules, the habeas corpus statutes say nothing about the proper method for obtaining correction of asserted errors after judgment, whether on appeal or in the district court. Accordingly, the timeliness of respondent's post-judgment motion was governed by Rule 52 (b) or 59.

534 F. 2d 331, reversed.

POWELL, J., delivered the opinion for a unanimous Court. BLACKMUN, J., filed a concurring opinion, in which REHNQUIST, J., joined.

MR. JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide whether the Court of Appeals lacked jurisdiction to review an order directing petitioner's discharge from respondent's custody because respondent's appeal was untimely. In order to resolve this question, we must consider the applicability of Federal Rules of Civil Procedure 52 (b) and 59 in habeas corpus proceedings. Because we conclude that the Court of Appeals lacked jurisdiction, we reverse.[1]

[1] In light of this disposition, it is unnecessary to reach any of the other questions presented. In addition to his jurisdictional point, petitioner contended that the Court of Appeals erred in finding the facts *de novo* on the issue of probable cause and in concluding that petitioner's arrest was lawful. On the latter point, petitioner maintained that the arrest of four youths in the Browder home violated the Fourth and Fourteenth Amendments' requirement of probable cause, *Davis* v. *Mississippi*, 394 U. S. 721 (1969), and, even assuming the existence of probable cause, that the Fourth and Fourteenth Amendments required the police to

95TH CONGRESS
1ST SESSION

S. 1214

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, FEBRUARY 21), 1977

Mr. ANDREZK (for himself, Mr. HUMPHREY, and Mr. MCGOVERN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1977".

FINDINGS

SEC. 2. Recognizing the special relations of the United States with the Indian and Indian tribes and the Federal responsibility for the care of the Indian people, the Congress finds that:

(a) An alarmingly high percentage of Indian children, living within both urban communities and Indian reservations, are separated from their natural parents through the actions of nontribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

(b) The separation of Indian children from their biological families frequently occurs in situations where one or more of the following circumstances exist: (1) the natural parent does not understand the nature of the documents or proceedings involved; (2) neither the child nor the natural parents are represented by counsel or otherwise advised of their rights; (3) the Government officials involved are unfamiliar with, and often disdainful of, Indian culture and society; (4) the conditions which led to the separation are not demonstrably harmful or are remediable or transitory in character; and (5) responsible tribal authorities are not consulted about or even informed of the nontribal government actions.

(c) The separation of Indian children from their natural parents, including especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among

Indian children for dropouts, alcoholism and drug abuse, suicides, and crime. For the parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair. For Indians generally, the child placement activities of nontribal government agencies undercut the continued existence of tribes as self-governing communities and, in particular, subvert tribal jurisdiction in the sensitive field of domestic and family relations.

DECLARATION OF POLICY

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, to discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, to assist Indian tribes in the operation of tribal family development programs, and generally to promote the stability and security of Indian family life.

DEFINITIONS

SEC. 4. For purposes of this Act:

(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.

(b) "Indian" means any person who is a member of, or who is eligible for membership in, a federally recognized Indian tribe, as defined in subsection (c) hereof.

(c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native region, village, or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned and controlled by Indians, or a majority of whose members are Indians.

(e) "Tribal court" means the Court of Indian Offenses; any court operated and maintained by an Indian tribe, and any other tribunal which performs judicial functions in the name of an Indian tribe within an Indian reservation.

(f) "Nontribal government agency" means any Federal, State or local government department, bureau, agency, or other office, including any court, and any private agency licensed by a State or local government, which has jurisdiction or which performs functions and exercises responsibilities in the fields of social services, welfare, and domestic relations, including child placement

(g) "Child placement" means any proceedings, judicial, quasi-judicial, or administrative, voluntary or involuntary, and public or private, under which an Indian child is removed from the custody of his natural parent or parents, his Indian adoptive parent or parents, or the custody of any blood relative in whose care he has been left by his natural parent or parents, or his Indian adoptive parent or parents, and is either offered for adoption or is placed in a foster home or other institution.

(h) "Natural parent" means the biological parent of a child and also any Indian who has adopted a child.

(i) "Blood relative" means any grandparent, aunt or uncle (whether by blood or marriage), brother or sister, brother- or sister-in-law, niece or nephew, or stepparent, whether by blood, marriage, or adoption, over the age of eighteen or otherwise emancipated, or as defined by tribal law or custom.

TITLE I—CHILD PLACEMENT STANDARDS

SEC. 101. (a) In the case of any Indian child who resides within an Indian reservation, no child placement shall be valid or given any legal force and effect, except temporary placements after emergency removal under circumstances where the physical or emotional well-being of the child is immediately threatened, unless made pursuant to an order of the tribal court, where a tribal court exists

within such reservation which exercises jurisdiction over child welfare matters and domestic relations.

(b) In the case of any Indian child who is domiciled within an Indian reservation, or who resides within an Indian reservation which does not have a tribal court, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless the Indian tribe occupying such reservation has been accorded thirty days' written notice of, and a right to intervene as an interested party in, the child placement proceedings. For the purposes of this Act, an Indian child shall be deemed to be domiciled where his natural parent or parents, or the blood relative in whose care he may have been left by his natural parent or parents, is domiciled.

(c) In the case of any Indian child who is not a resident or domiciliary of an Indian reservation, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless the Indian tribe of which the child is a member, or is eligible for membership, has been accorded thirty days' written notice of, and a right to intervene as an interested party in, the child placement proceedings.

(d) No Indian child shall be removed from the c ·ody of his natural parent or parents, Indian adoptive parent or parents, or blood relative in whose custody the child has been placed by the private actions of any private individual, corporation, group, or institution for a period of more than thirty days without written notice served upon the tribe of which the child is a member or is eligible for membership in or upon whose reservation the child resides or is domiciled. The notice shall be in writing signed or acknowledged by the child's natural parent or parents, Indian adoptive parent or parents, or blood relative, and the child's temporary guardian, notarized or signed by two witnesses, stating the names of all the parties, their addresses, the expected length of removal, the purpose of removal, and the extent to which custody over the child is transferred to the temporary guardian. This section shall not apply if the tribe has enacted or enacts its own law governing private placements. No placement shall be valid or given any legal force and effect if made in violation of this section.

(e) It shall be the duty of the party seeking a change of the custody of an Indian child to notify the revelant tribal governing body by mailing written notice to the chief executive officer or such other person as the tribe may designate: *Provided further*, That the judge or hearing officer at any child placement proceeding shall make a good faith deter-

mination of whether the child involved is Indian and, if so, which tribe must be notified.

SEC. 102. (a) No placement of an Indian child, except as provided in section 101 (d) of this Act, shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless (1) his natural parent or parents, or the blood relative in whose care the child may have been left by his natural parent or parents, has been accorded thirty days' written notice of the child placement proceedings and a right (A) to intervene in the proceedings as an interested party through counsel or, alternatively, in a tribal court, through a lay advocate, (B) to submit evidence and present witnesses on his or her own behalf, and (C) to examine all reports or other documents and files upon which any decision with respect to child placement may be based; and (2) the nontribal government agency seeking to effect the child placement affirmatively shows that alternative remedial services and rehabilitative programs designed to prevent the break-up of the Indian family have been made available and proved unsuccessful.

(b) Where the natural parent or parents of an Indian child, who falls within any of three classes mentioned in section 101 of this Act, or the blood relative in whose care the child may have been left by his natural parent or parents,

opposes the loss of custody, no child placement shall be valid or given any legal force and effect in the absence of a determination, supported by an overwhelming weight of the evidence, including testimony by qualified professional witnesses, that the continued custody of the child by his natural parent or parents, or the blood relative in whose care the child has been left, will result in serious emotional damage, or in the absence of a determination, supported by clear and convincing evidence, including testimony by a qualified physician, that the continued custody of the child by his natural parent or parents, or the blood relative in whose care the child has been left, will result in serious physical damage. In making such determinations, poverty, including inadequate or crowded housing, misconduct, and alcohol abuse on the part of either natural parent, or the blood relative, shall not be deemed prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standard to be applied in any proceeding covered by this Act shall be the standards of the Indian community in which the natural parent or parents, Indian adoptive parent or parents, or blood relatives reside.

(c) In the event that the natural parent or parents or Indian adoptive parent or parents of an Indian child consent to the loss of custody, whether temporary or permanent, no child placement shall be valid or given any legal force and

effect, unless such consent is voluntary, in writing, executed before a judge of a court having jurisdiction over child placements, and accompanied by the witnessing judge's certificate that the consent was explained in detail, was translated into the natural parent's native language, and was fully understood by him or her. If the consent is to a nonadoptive child placement, the natural parent or parents or Indian adopti parent or parents may withdraw the consent at any time for any reason, and the consent shall be deemed for all purposes, except temporary custody, as having never been given. If the consent is to an adoptive child placement, and the child is over the age of two, the natural parent or parents or Indian adoptive parent or parents may withdraw the consent for any reason at any time before the final decree of adoption: *Provided further,* That no final decree of adoption may be entered within ninety days after the natural parent or parents, Indian adoptive parent or parents, or blood relative has given consent to the adoption. A final decree of adoption may be set aside only upon a showing that the child is again being placed for adoption, that the adoption did not comply with the requirements of this Act or was otherwise unlawful, or that the consent to the adoption was not voluntary. Consent by the natural parent or parents of an Indian child given within ninety days of the birth of the child shall be presumed to be involuntary.

(d) No placement of an Indian child, except as provided by section 101 (d) of this Act, shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless the child has been represented in the placement proceedings by counsel or, alternatively, in a tribal court, by a lay advocate, and unless his natural parent or parents, Indian adoptive parent or parents, or the blood relative in whose care the child may have been left by his natural parent or parents, or Indian adoptive parent or parents, has been represented by separate counsel or lay advocate.

SEC. 103. (a) In offering for adoption an Indian child, every nontribal government agency shall grant a preference to members of the child's extended Indian family, which shall be defined by tribal law or custom.

(b) In otherwise placing an Indian child, every nontribal government agency, in the absence of good cause shown to the contrary, shall grant preferences in the following order: (1) to the child's extended Indian family, (2) to a foster home, if any, licensed or otherwise designated by the Indian tribe occupying the reservation of which the child is a resident or domiciliary; (3) to a foster home, if any, licensed by the Indian tribe of which the child is a member or is eligible for membership; (4) to any other

foster home within an Indian reservation which is recommended by the Indian tribe of which the child is a member or is eligible for membership; (5) to any foster home run by an Indian family; and (6) to a custodial institution for children operated by an Indian tribe, a tribal organization or nonprofit Indian organization: *Provided, however,* That each Indian tribe may modify or amend the foregoing order of preferences, and may add or delete preference categories, by resolution of its government body. Every nontribal government agency shall maintain a record evidencing its efforts to comply with the order of preferences provided under this subsection in each case of an Indian child placement.

(c) Where an Indian child is placed in a foster or adoptive home, or in an institution, outside the reservation of which the child is a resident, pursuant to an order of a tribal court, the tribal court shall retain continuing jurisdiction over such child placement until the child attains the age of eighteen.

SEC. 104. After an Indian adoptive child attains the age of eighteen, upon his or her application to the court which entered the final adoption decree, and in the absence of good cause shown to the contrary, the child shall have a right to learn the names and last known address of his natural parent or parents and siblings who also have attained the age of

eighteen, their tribal affiliation and the grounds for the severance of their family relations.

SEC. 105. In any proceeding within the jurisdiction of this Act the United States, any Indian Reservation, State, Commonwealth, territory, or possession thereof shall give full faith and credit to the laws of any Indian tribe involved in a proceeding under the Act and any Tribal Court orders issued in such proceeding.

TITLE II—INDIAN FAMILY DEVELOPMENT

SEC. 201. (a) The Secretary is hereby authorized, under such rules and regulations as he may prescribe, to make grants to, or enter into contracts with, Indian tribes for the purpose of assisting such tribes in the establishment and operation of Indian family development programs, as described in section 202, and in the preparation and implementation of child welfare codes.

(b) The Secretary is further authorized, under such rules and regulations as he may prescribe, to carry out, or to make grants to or contracts with Indian tribes to carry out, a special home improvement program to upgrade: (1) the housing conditions of Indian foster and adoptive parents, if such housing conditions are substandard; (2) the housing conditions of Indians who seek Indian foster or adoptive children, where improved housing would enable such In-

dians to qualify as foster or adoptive parents under tribal law or regulations; and (3) the housing conditions of Indian families facing disintegration, where improved housing would contribute significantly to family stability.

(c) The Secretary is also authorized, under such rules and regulations as he may prescribe to carry out, or to make grants to or contracts with Indian organizations to carry out, off-reservation Indian family development programs, as described in section 203. In the establishment, operation, and funding of off-reservation Indian family development programs, the Secretary may enter into agreements or other cooperative arrangements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(d) There are authorized to be appropriated $21,792,000 during fiscal year 1978, $23,700,000 during fiscal year 1979, $25,120,000 during fiscal year 1980, and such sums as may be necessary during each subsequent fiscal year in order to carry out the purposes of this section.

SEC. 202. (a) Every Indian tribe is hereby authorized to establish and operate an Indian family development program, which program may include some or all of the following features:

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the construction, operation, and maintenance of family development centers, as defined in subsection (c) (2) hereof;

(3) family assistance, including homemakers and home counselors, day care, after-school care and employment, recreational activities, and respite services;

(4) provision for counseling Indian families and Indian children;

(5) a special home improvement program, as defined in section 201 (b) ;

(6) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(7) education and training of Indians, including tribal court judges and staff, in skills relating to child welfare and family assistance programs, and the granting of scholarships for such education and training; and

(8) a subsidy program under which Indian adoptive children are provided the same support as Indian foster children.

(b) Where an Indian tribe has implemented a licensing or other regulatory system pursuant to subsection 202 (a) (1), any Indian foster or adoptive home so

licensed or designated (1) may accept Indian child placements by a nontribal government agency and State funds in support of Indian children, (2) shall have a first preference in the placement of an Indian child who is a resident or domiciliary of such tribe's reservation in accordance with subsection 103 (b) (1) of this Act, and (3) shall have a second preference in the placement of an Indian child who is a member of, or eligible for membership in, such tribe in accordance with subsection 103 (b) (2) of this Act.

(c) (1) The objective of every Indian family development program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his natural parent or parents, or the custody of any blood relative in whose care he has been left by his natural parent or parents, by a tribal court or nontribal government agency shall be effected only as a last resort.

(2) In furtherance of this objective, every Indian tribe is authorized to construct, operate, and maintain a family development center which may contain, among other features:

(A) facilities for counseling Indian families which face disintegration and, where appropriate, for the treatment of individual family members;

(B) facilities for the temporary custody of Indian

children whose natural parent or parents are temporarily unable or unwilling to care for them or who otherwise are left temporarily without adequate adult supervision by a blood relative; and

(C) facilities for the temporary custody of Indian parents, where so ordered by a tribal court, in lieu of incarceration for public intoxication or the commission of any other minor offense.

SEC. 203. Off-reservation Indian family development programs, operated either directly by the Secretary or through grants and contracts with local Indian organizations, may include, but shall not be limited to, the following features:

(a) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children are provided the same support as Indian foster children;

(b) the construction, operation, and maintenance of family development centers providing the facilities and services set forth in paragraphs (2) (A) and (B) of section 202(c) of this Act;

(c) family assistance, including homemakers and home counselors, day care, after-school care and employment, recreational activities, and respite services;

(d) provision for counseling and treatment both of

Indian families which face disintegration and, where appropriate, of Indian foster and adoptive children;

(e) an Indian child defense program, as defined in section 204(b), and other representation of Indian children before the courts; and

(f) furnishing guidance, representation, and advice to Indian families involved in child placement proceedings before nontribal government agencies.

SEC. 204. (a) The Secretary is hereby authorized and directed, under such rules and regulations as he may prescribe, to undertake a study of the circumstances surrounding all child placements which have occurred during the sixteen years preceding the effective date of this Act, where the Indian child so placed still is under the age of eighteen on such date. If the Secretary has good cause to believe, on the basis of this study, that a child placement was or may be invalid or otherwise legally defective, and if either natural parent, Indian adoptive parent or the blood relative previously having custody of the Indian child so requests, the Secretary is authorized, in his discretion, to institute a habeas corpus action or other appropriate legal proceeding in the name of the United States on behalf of such parent, Indian adoptive parent or blood relative in the United States district court for the district in which the child resides for the purpose of challenging the child placement and, if it is found

invalid or legally defective, of restoring custody of the Indian child to its natural parent or parents, Indian adoptive parent or parents, or to the blood relative in whose care the child had been left.

(b) The Secretary is further authorized and directed, under such rules and regulations as he may prescribe, to operate, or to make grants or contracts with Indian tribes or Indian organizations to operate, an Indian family defense program which shall provide representation by an attorney or, alternatively, in a tribal court, by a lay advocate for any Indian child who is the subject of a child placement proceeding, or, if appropriate, for his natural parent or parents, or the blood relative in whose care the child may have been left by his natural parent or parents.

(c) The Secretary also is authorized and directed, under such rules and regulations as he may prescribe, to collect and maintain records in a single, central location of all Indian child placements which either are effected after the date of this Act or are the subject of the study required under subsection (a) hereof, which records shall show as to each such placement the name and tribal affiliation of the child, the names and addresses of his natural parents and the blood relative, if any, in whose care he may have been left by a natural parent, the names and addresses of his siblings, and the names and locations of any tribal court

or nontribal government agency which possesses files or information concerning his placement. Such records shall not be open for inspection or copying pursuant to the Freedom of Information Act (80 Stat. 381), as amended, but information concerning a particular child placement shall be made available in whole or in part, as necessary: (1) to an Indian adoptive child over the age of eighteen for the purpose of identifying the court which entered his final adoption decree and furnishing such court with the information specified in section 104; (2) to the adoptive parent of an Indian child or to an Indian tribe for the purpose of assisting in the enrollment of an Indian adoptive child in the tribe of which he is eligible for membership; and (3) to the adoptive parent of an Indian child for the purpose of establishing or continuing his tribal affiliation or a relationship with his siblings. The records collected by the Secretary pursuant to this section shall be privileged and confidential and shall be used only for the specific purposes set forth in this Act.

(d) There are authorized to be appropriated $18,000,000 during fiscal year 1979, $20,000,000 during fiscal year 1980, $22,000,000 during fiscal year 1981, and such sums as may be necessary during each subsequent fiscal year in order to carry out the purposes of this section, including the payment of attorney fees.

SEC. 205. (a) The Secretary is authorized to perform

any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this Act.

(b) (1) Within six months from the date of enactment of this Act, the Secretary shall consult with Indian tribes, Indian organizations and Indian-interest agencies in the consideration and formulation of rules and regulations to implement the provisions of this Act.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(c) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the Secretary shall present the

proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively, and shall, to the extent practicable, consult with the tribes, organizations, and agencies specified in subsection (b) (1) of this section, and shall publish any proposed revisions in the Federal Register not less than sixty days' prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

Judge Kleinkauf

(1) Sec. 11 — Move 2 front of bill

(2) 20.15.060(a) — use language from original draft

(3) Delete section (4)

(4) delete section 6 — Amended last year
" " 7 " " "
" " 9 " " "

SB 84 — Chapter 36

(5) Page 6 — line 3 — Add

Such legal custody carries the right to consent to adoption

(6) transmit instrument to court for filing and issuing an order

Why not delete (b) — go to court

Art Holmburg

Page 4, line 27 → correct statutory sections?

Page 1, line 16 → define who is authorized

Original sponsor: Judiciary Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 419

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to adoption and voluntary relinquishment of parental rights."

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

* Section 1. AS 20.15.050(a)(4) is amended to read:

(4) a parent who has voluntarily relinquished his right to consent under AS 25.20.035 [SEC. 180 OF THIS CHAPTER];

* Sec. 2. AS 20.15.060 is repealed and re-enacted to read:

Sec. 20.15.060. HOW CONSENT IS EXECUTED. (a) A consent which does not name or otherwise identify the adopting parent is valid if the consent is executed at any time after the birth of the child in the presence of the court or in the presence of a person authorized to take acknowledgements. However, if the consenting person desires, this consent shall specifically name the adopting person, and this consent is valid only for the purpose of adoption by the named adopting parent.

(b) All consents to adoption shall be executed in writing and shall give adequate notice that

(1) the person consenting to adoption has the right to consent to a specific person adopting the child, if the consenting person so desires;

(2) the person consenting to adoption has a right to appear at the adoption hearing;

(3) the hearing will not take place less than 30 days after the consent has been signed;

(4) the person consenting to adoption has the right to with-

draw his consent at any time before the adoption hearing or after commencement of the adoption hearing upon a showing of good cause;

(5) the consent itself does not alter the consenting person's existing rights and responsibilities toward the child;

(6) the adoption decree terminates the consenting person's rights and responsibilities toward the child;

(7) the person consenting must give his consent voluntarily; and

(8) relinquishment of parental rights under AS 25.20.035 is available as an alternative to consent to adoption and that the person obtaining the consent to adoption has the legal duty to explain the difference between the alternatives.

* Sec. 3. AS 20.15.070(b) is amended to read:

(b) A consent to adoption may be withdrawn before the <u>first evidentiary adoption hearing</u> [ENTRY OF A DECREE OF ADOPTION, WITHIN 10 DAYS,] by delivering written notice to the <u>court. After commencement of the hearing and before entry of a decree, a consenting person must petition the court in order to withdraw his consent. The petition shall be granted only upon a showing of good cause</u> [PERSON OBTAINING THE CONSENT, OR AFTER THE 10-DAY PERIOD, IF THE COURT FINDS, AFTER NOTICE AND OPPORTUNITY TO BE HEARD IS AFFORDED TO PETITIONER, THE PERSON SEEKING THE WITHDRAWAL, AND THE AGENCY PLACING A CHILD FOR ADOPTION, THAT THE WITHDRAWAL IS IN THE BEST INTEREST OF THE PERSON TO BE ADOPTED AND THE COURT ORDERS THE WITHDRAWAL].

* Sec. 4. AS 20.15.100(b) is amended to read:

(b) Notice to persons specified in sec. 50 <u>of this chapter</u> shall include a statement of the grounds under which consent to the adoption is not required. Notice given under this section shall be adequate to give actual notice of the proceedings, taking into account education and

language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of hearing shall contain all names by which the minor has been identified and shall state in summary form the effect of a decree of adoption. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law [IN THIS STATE] or in any manner the court by order directs. [NOTICE BY PUBLICATION MAY NOT BE GIVEN.] Proof of the giving of the notice shall be filed with the court before the petition is heard, subject to the time limitation in (e) of this section. Childrens Rule 10(9)

* Sec. 5. AS 20.15 is amended by adding a new section to read:

Sec. 20.15.205. INFORMATION. The department shall disseminate information throughout the state with special emphasis to rural communities regarding the availability of adoptable children and financial assistance to adoptive families under this chapter.

* Sec. 6. AS 25.20 is amended by adding new sections to read:

Sec. 25.20.032. SEVERANCE OF PARENT AND CHILD RELATIONSHIP. The parent and child relationship may be severed either in an adoption proceeding under AS 20.15, in a voluntary relinquishment proceeding under sec. 35 of this chapter, or in a juvenile court proceeding under AS 47.10.010(a)(2).

Sec. 25.20.035. VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND RESPONSIBILITIES. (a) A parent may petition the court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities with reference to his child, including residual rights and responsibilities.

(1) The petition for relinquishment shall state

(A) the date and place of birth, if known, of the child;

(B) the full name, date of birth, and place and duration

of residence of the petitioner; and

(C) the relationship of the petitioner to the child.

(2) The court shall conduct a hearing on the petition. The court shall ascertain whether the parent relinquishing his rights and responsibilities understands the meaning of relinquishment, and, if necessary, the court shall explain to the parent the meaning and consequences of relinquishment and the right to withdraw the relinquishment under (5) of this subsection. If the court finds that the parent does not adequately understand the meaning of relinquishment, then it may continue the matter and order the parent to be counseled regarding the relinquishment.

(3) If the court finds that voluntary relinquishment is in the best interests of the petitioner and the child, it shall enter an order of voluntary relinquishment terminating the parent and child relationship, and order guardianship of the person and legal custody of the child to be transferred to the Department of Health and Social Services, a licensed child placement agency, or a willing and able relative of the child, whichever is in the best interests of the child. A copy of the court's order shall be given to the parent, and it shall also state the relinquishing parent's right to withdraw his relinquishment under (5) of this subsection.

(4) For the purpose of a proceeding under this subsection, an order of relinquishment terminating all rights and responsibilities of a parent with reference to his child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights and responsibilities or parent and child relationship are terminated by the relinquishment order and with any required notice of an adoption proceeding. However, a person or agency granted guardian-

ship and custody of a child by court order under (3) of this subsection must consent to the adoption of the child and be furnished with notice of adoption.

(5) The relinquishing parent may petition the court for vacation of the order of voluntary relinquishment within 10 days of issuance of the order upon a showing of good cause.

(b) As an alternative to a court order of relinquishment under (a) of this section, a parent may voluntarily relinquish his rights and responsibilities by signing a written instrument in the presence of a Department of Health and Social Services representative or a representative of an agency licensed under AS 47.35.100. A copy of the relinquishment instrument shall be given to the relinquishing parent and it shall state the meaning of relinquishment of parental rights and responsibilities. Upon signature of the instrument the department or agency shall take custody of the child and shall be responsible for the care and custody of the child. The relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later, and the relinquishment is invalid unless it states that the parent has this right of withdrawal.

* Sec. 7. AS 20.15.180 and 20.15.240(7) are repealed.

ALASKA CHAPTER
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.
Box 3-3794
Anchorage, Alaska 99501

ISSUES '78

Revision of Alaska's Adoption and Relinquishment of Parental Rights Statutes

The Alaska Chapter, National Association of Social Workers believes that present Alaska Statutes governing Adoption do not adequately protect the legal rights of children, natural parents nor prospective adoptive parents.

ACTION REQUESTED

Legislative support is requested for revision of Alaska's statutes as follows:

1. Enactment of legislation providing for the voluntary relinquishment of parental rights and insuring the jurisdiction of the court over the child until an adoption is finalized.

2. Amendment of present adoption laws to require that the Consent to Adoption form be utilized only in cases where the prospective adoptive parent is known to the natural parent and the natural parent is consenting to that person's (and no other) adoption of the child.

3. That the jurisdiction of the court be required to protect every child to be adopted and that the individual or agency serving as legal guardian until the adoption of the child be identified.

4. That termination of parental rights within the adoption hearing be permitted only in cases where the natural parent knows and is specifically consenting to the adoption of the child by the prospective adoptive individual(s) (and no others).

Note: Parental rights can now be terminated by court order after the court has adjudicated a child as a Child in Need of Aid (AS.47.10.080(c)(3).

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

November 8, 1976

SUBJECT: The Adoption Bill

TO: Legislative Council

FROM: Andrew M. Brown

Alaska's current adoption statutes were enacted in 1974, based on the Revised Uniform Adoption Act. Although the statutes are of recent vintage, the Task Force saw some changes were necessary in order to better protect both parents' and children's rights.

Section 1 of the bill repeals and re-enacts AS 20.15.060 on how consent is executed. §.060(a) requires the consent to state the name of the person who is to adopt the child. This would allow the consenting parent to decide whether the adopting person would be a suitable parent for the child. §.060(b) would require that the consenting to adoption procedure be more informative of the parental rights involved. It was felt that persons who consent to adoption often do not fully understand their rights concerning the adoption process or the meaning of their consent. By requiring the consent to state specific things, it is hoped that consenting persons do not mistake the consent itself as relieving them of their rights and responsibilities toward the child, but that only the adoption decree terminates those rights and responsibilities. By specifying the consenting person can attend the adoption hearing and stating that the hearing will not take place less than 30 days after the consent has been signed, the consenting person has a chance for greater involvement in the adoption process and has more time to make sure that he really wants to consent to adoption. The current §.060(b) would be deleted, because it deals with permitting disclosure of the adopting person's name, while the proposed bill seeks to require disclosure.

Section 2 would amend AS 20.15.070(b) by allowing withdrawal of consent at any time before the first evidentiary hearing on the adoption. The withdrawal would have to be given to the court, rather than the person obtaining the consent, so that the court, which already has the adoption petition in its docket, will be adequately informed of the withdrawal of consent. The allowance of withdrawal at any time prior to

the first evidentiary hearing permits more time for the consenting person to evaluate the meaning of his consent and to make sure that is what he wants to do. Since adoption terminates the consenting pe-son's rights to the child, it would be preferable to give him time to retract his consent. The present 10 day limit in §.070(b) is too restrictive, especially for persons in rural areas who may find it difficult to contact the court within that period. Withdrawal would also be allowed once the adoption hearing has started if the consenting person petitions the court and the court finds that there is good cause to allow withdrawal. The reason for the good cause requirement is to eliminate the possibility of capricious withdrawals during a hearing. Withdrawal up to the evidentiary hearing can be done for any reason, but it was felt that once an adoption hearing has been started and the lawyers, parties, and judge brought together, that only a good cause should be allowed to withdraw the consent. It should be remembered that while consent may be given, the court does not have to grant the adoption petition. Under AS 20.15.120(c) the court must consider the child's best interests. If a consenting person wants to withdraw the consent after the hearing has started, but does not have good cause grounds, the court may still rule on other grounds that the adoption not be allowed.

Section 3 amends AS 20.15.100(b) by adding "of this chapter" in the first sentence. Also, "under Alaska law" is inserted in the fourth sentence so that it is clearer as to its meaning any service of process consistent with Alaska law is permissible; even out of state service would be all right if done according to Alaska law. The sentence "Notice by publication may not be given." is deleted for two reasons. First, since adoption proceedings vitally affect the basic parent and child relationship, due process of law requires that the parents be entitled to as much notice as possible. Recent U.S. Supreme Court and Alaska Supreme Court decisions uphold the right to notice when one's interests are at stake. By deleting this sentence, the option of publication or posting is left for the court if other means of notice, such as personal service or certified mail, fail. The second reason for the deletion is that the sentence has no effect, because the legislative bill (HB 70) which became the present adoption law in 1974 did not expressly state that this sentence would change Children's Rule 10(g), which mandates publication in certain instances. Therefore, under Rule 40(e) of the Uniform Rules of the Alaska State Legislature the sentence would be ineffective. The added last sentence would require that the rights of notice applicable to adoption hearings also apply to termination proceedings under AS 47.10. Since both involve the termination of the parent-child relationship, the due process rights of notice should be applicable to both.

Sections 4 through 8 deal with the present adoption assistance law. AS 20.15.190 is the introductory section on adoption assistance. The Task Force has amended it so it reflects the purpose and extent of adoption assistance. The term "handicapped" has been replaced by "eligible for adoption," because "handicapped" implies a physical or mental condition of the child, while the Task Force thought that adoption assistance ought to apply not only to children with physical or mental problems, but also to those children whose adoptability is dependent on conditions of race, ethnic background, age, membership in a sibling group, color, or language. This assistance would also be applicable in cases where financial limitations impede families from adopting children. The Task Force found that the applicability of adoption assistance should be broadened, especially in view of the fact that for Fiscal Year 1976 assistance was given for only one child's adoption and for Fiscal Year 1977 assistance is being given for only eight "handicapped" children's adoptions.

Section 5 of the adoption bill eliminates some wording which is ambiguous. The deletion of "are caring for a handicapped minor on a foster parent basis and who" is to clarify that the assistance investigations shall apply to all applicants and not just those who are foster parents. This deletion also eliminates the implication that only foster parents are entitled to the adoption assistance. The word "handicapped" is deleted, because it is no longer relevant.

Section 6 involves a new section on information about availability of adoptable children and financial assistance to adoptive families. This amendment would require the Department of Health and Social Services to convey the information. The "special emphasis to rural communities" is inserted, because the Task Force felt that there could and should be more opportunities of adoption by Natives, but that a lack of information about the current assistance law thwarts the chances of the effective use of the law in rural areas.

Section 7 amends AS 20.15.210 by requiring the amount and duration of subsidy payments to be determined according to departmental regulations which have to be adopted. At the present time, the amount and duration is left to the department's discretion, and the Task Force thought this allowed for capacious and unregulated determinations, which were detrimental to implementing the adoption assistance law. The maximum amount of the subsidies would not be changed; it would not exceed the existing rate and benefits for foster care. There had been some concern over whether adoption assistance would affect state aid under other programs. To

remove this possibility a new sentence has been added to §.210 explicitly stating that a grant of adoption assistance subsidies would not affect eligibility or computation of resources and needs under the Aid to the Permanently and Totally Disabled Act in AS 47.25. It should be noted that adoption assistance is to help the whole family in the adoption process, while the assistance under the Aid to the Permanently and Totally Disabled Act aims to give financial aid to the disabled individual on the basis of his disability. Each kind of assistance has its own purpose and thus they should not offset each other. The final change to the adoption assistance law is repealing the definition of "handicapped child" in AS 20.15.240(7), because that term is unnecessary in light of the Task Force's recommendations on adoption assistance.

AMB:hjd

To testify on HB 419

Pudge Kleinkauf
Natl Assoc of Soc Workers
member Children's Code Task Fc

Art Holmburg
Div of Soc. Serv.

Peggy Burke (may testify - call last)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

M E M O R A N D U M November 8, 1976

SUBJECT: The Relinquishment of Parental Rights and Responsibilities Bill

TO: Legislative Council

FROM: Andrew M. Brown

The purpose behind this bill is to clarify the ways in which the parent and child relationship can be severed, and to specify the rights and procedures a parent is entitled to in a voluntary relinquishment proceeding. The present law in AS 20.15.180 seems to combine confusingly relinquishment with involuntary termination of parental rights and responsibilities, and there is a question whether voluntary relinquishment belongs in the adoption laws, since it does not necessarily have any connection with adoption. It would be better to put voluntary relinquishment in AS 25.20 under the chapter on parent and child, because it would then be clear that relinquishment can be done without any prospective adoption. The present law implies that relinquishment is part of the adoption process, but since that is not necessarily so, putting it in AS 25.20 clarifies the matter.

Section 1 of this bill sets out the rights and procedures pertaining to voluntary relinquishment. Subsection (a) states the rights of a parent to petition a court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities. The "duly authorized representative" refers to magistrates so persons in rural areas will have access to this procedure. Subsection (b) specifies what goes in the petition for voluntary relinquishment. Subsection (c) stipulates the court shall conduct the hearing making sure that the parent understands the meaning of relinquishment and the right of withdrawal, or the court can continue the matter and order the counseling for the parent. This is to insure that the parent comprehends the consequences and finality of relinquishment. Subsection (d) allows for the court to make an order of voluntary relinquishment, if it finds such an order is in the best interests of parent and child, and to order the guardianship of the person and legal custody of the child to be transferred to either the Department of Health and Social Services, a licensed child placement agency or a willing and able relative of the child. This reference for the court to make a

guardianship and custody order gives the court an explicit power which is only very vague in the current law in AS 20.15.180. The court's choice of guardianship and custody will be governed by the best interests of the child test. A copy of the court's order would be given to the parent and it must also state the right of the parent to withdraw his relinquishment. Subsection (e) is from the current 20.15.180(d). It explains that a relinquishment order dispenses with the right or necessity of consent by the relinquishing parent in an adoption proceeding. Subsection (f) states the relinquishing parent's right to petition for vacation of the court's order may be done only within 10 days of the court's order of relinquishment and only upon a petition showing good cause. Since Subsection (c) states that the court must ascertain the parent's understanding of the relinquishment, it is presumed that the court's granting the order is done on the basis of the relinquishing parent comprehending the consequences, and therefore any petition to vacate the court's order should be for a good reason and not a capricious change of mind. It is intended that the court explanation of the meaning of relinquishment will dispel whatever questions or doubts the relinquishing parent has about either going ahead with the proceeding or asking for dismissal of his relinquishment petition.

Section 2 of the bill amends the parent-child chapter in AS 25.20 by adding a section setting out the three methods by which the parent-child relationship can be severed. Currently, it is only by knowing the various statutes can one figure out how there can be severance. This new section 25.20.032 specifically states that the relationship can be severed either in an adoption proceeding, in a voluntary relinquishment proceeding or in a juvenile court proceeding.

Section 3 sets out other statutory changes necessary if this bill becomes effective.

Section 4 repeals AS 20.15.180. It should be noted that §.180 allows almost any person to initiate a termination proceeding. This is overbroad and could lead to unwarranted interferences into family matters. If termination is necessary it should be done under the juvenile court statutes on the basis of a child in need of aid, rather than the adoption statutes. As the present statutes read, a person, who wants to adopt a child who is not up for adoption, could start a termination proceeding which could result in the parent and child relationship being involuntarily terminated and thus the child being available for adoption. This is a loophole in the law which should be closed, and by making the voluntary relinquishment statute explicit as to who can use the statute, it forces the issue of involuntary termination into its proper place under the juvenile court laws in AS 47.10.

AMB:hjd

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to relinquishment of parental rights and responsibilities."

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

* Section 1. AS 25.20 is amended by adding a new section to read:

Sec. 25.20.035. VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND RESPONSIBILITIES. (a) A parent may petition the court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities with reference to his child, including residual rights and responsibilities.

(b) The petition for relinquishment shall state

(1) the date and place of birth, if known, of the child;

(2) the full name, date of birth, and place and duration of residence of the petitioner; and

(3) the relationship of the petitioner to the child.

(c) The court shall conduct a hearing on the petition. The court shall ascertain whether the parent relinquishing his rights and responsibilities understands the meaning of relinquishment, and, if necessary, the court shall explain to the parent the meaning and consequences of relinquishment and the right to withdraw the relinquishment under (f) of this section. If the court finds that the parent does not adequately understand the meaning of relinquishment, then it may continue the matter and order the parent to be counseled regarding the relinquishment.

(d) If the court finds that voluntary relinquishment is in the

best interests of the petitioner and the child, it shall enter an order of voluntary relinquishment terminating the parent and child relationship, and order guardianship of the person and legal custody of the child to be transferred to the Department of Health and Social Services, a licensed child placement agency, or a willing and able relative of the child, whichever is in the best interests of the child. A copy of the court's order shall be given to the parent, and it shall also state the relinquishing parent's right to withdraw his relinquishment.

(e) For the purpose of a proceeding under this section, an order of relinquishment terminating all rights and responsibilities of a parent with reference to his child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights and responsibilities or parent and child relationship are terminated by the relinquishment order and with any required notice of an adoption proceeding.

(f) The relinquishing parent may petition the court for vacation of the order of voluntary relinquishment within 10 days of issuance of the order upon a showing of good cause.

* Sec. 2. AS 25.20 is amended by adding a new section to read:

Sec. 25.20.032. The parent and child relationship may be severed either in an adoption proceeding under AS 20.15, in a voluntary relinquishment proceeding under sec. 35 of this chapter, or in a juvenile court proceeding under AS 47.10.010(a)(2).

* Sec. 3. AS 20.15.050(a)(4) and (5) are amended to read:

(4) a parent who has <u>voluntarily</u> relinquished his right to consent under <u>AS 25.20.035</u> [sec. 180 OF THIS CHAPTER];

(5) a parent whose parental rights have been terminated by order of the court under <u>AS 47.10.080(c)(3)</u> [sec. 180 OF THIS CHAPTER];

* Sec. 4. AS 20.15.180 is repealed.

JOSEPH A. McLEAN
ATTORNEY AND COUNSELLOR AT LAW

TELEPHONE (907) 586-3210

P. O. Box 1774
MENDENHALL BUILDING
JUNEAU, ALASKA 99802

March 25, 1977

The Honorable Terry Gardner, Chairman
House Judiciary Committee,
Alaska Legislature
Juneau, Alaska 99801

Re: Senate Bill 106 and Companion House Bill 204

Dear Mr. Chairman:

The above Senate and House Bills relating to Children's laws was discussed at the regular meeting of the Juneau Bar Association today. Many of the proposals advanced by the authors of these bills are commendable.

Section 25.20.035 however, pertaining to a mandatory court proceeding in order to establish a voluntarily relinquishment of parental rights, is most definitly not in the best interest of either the parents or the child. This section should not be enacted, as well as any other section that sets up unreasonable hurdles for unfortunate parents who already have wrestled with and concluded the best interest of the child can be accomodated with an adoption.

Those of us in the Alaska Bar Association who have handled adoptions over the years and shared with the medical doctors and natural parents the processes required of adoption, adequately understand and feel confident that the present procedures are burdensome enough. Most certainly those of us involved recognize fully the concerns of a parent and before a relinquishment form is signed, believe that a parent fully understands the meaning.

To require a duplication of all this process and another ordeal in the court room for the natural mother will obstruct, rather than advance the best interest of the child.

Respectively yours,

Joseph A. McLean

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 28, 1977

Hon. Terry Gardiner
Alaska State Representative
Pouch V
Juneau, Alaska 99811

Re: S. B. 106

Dear Representative Gardiner:

I have received a copy of S.B. 106 which relates to children's laws and related judicial proceedings. I was a member of the Task Force that worked on the report that I believe ultimately led to the introduction of this bill, and I am, generally, in agreement with that Task Force report and the contents of S.B. 106. I think my only serious quarrel with either the Task Force report or the legislation relates to the amendments to A.S. 20.15.050 which are set forth on pages 4 and 5 and amendments to A.S. 20.15.070 (b) and .100 (b) (1), and A.S. 20.15.200 and .210 which are set forth on pages 5, 6 and 7. Those amendments generally relate to adoption procedures and particularly to the manner of obtaining consent in adoptions. I think the procedure involving the consent is unduly cumbersome, particularly when one gives any consideration to the adoptions that are handled in the outlying areas in Alaska. Rather than make the procedure more cumbersome, I think our aim ought to be to simplify it as much as possible consistent with due process. (1)

I am also opposed, as a general principle, to the parents of a child acquiring so much knowledge about who is going to adopt it. From the standpoint of the child, it is particularly important that the adoption decree be final and when natural parents know where the child is going and, indeed, have, at least in some cases, (2)

a power to veto a prospective placement, I think we succeed only in making the adoption procedure more cumbersome, and create difficulties in rendering what can be a final decree. I think those provisions of the proposed legislation deserve very close scrutiny.

Other than that, I think the Task Force work and the bill introduced in the Senate go a long ways to clearing up some ambiguities in the Children's Code and in the Children's Rules, and I am hopeful that the legislation can be enacted this Session.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

HB 204

League of Women Voters of Alaska

March 29, 1977

To: Sen. Sumner and other members of Senate HESS Committee
Members of House Judiciary Committee

From: Joy Jamison

Re: Sec. 18 of SB 106 and HB 204, "Children's laws and related judicial proceedings"

There has been much confusion regarding the proper interpretation of part (a) of Sec. 18 (AS 25.20.035), "Voluntary relinquishment of parental rights and responsibilities". The confusion appears to stem from the use of the word "may" in "A parent <u>may</u> petition the court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities with reference to his child, including residual rights and responsibilities."

The League has received conflicting legal opinions. One is that the parent would <u>not</u> have to go to court to relinquish the child; another that the parent <u>would</u> have to go to court for the relinquishment, thereby hopefully guaranteeing that the parent knows exactly what he is doing. Members of the Children's Code Revision Task Force are also confused.

The League's position is that an agency licensed to do adoption procedures should be able to make the decision as to whether or not a parent understands what he is doing.

We continue to urge the passage of the bill. If this particular section needs to be re-written or even pulled out altogether to facilitate passage of the body of the bill, we encourage you to do so. SB 106 is a much-needed piece of legislation.

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
645 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON

TELEPHONE
AREA CODE 907
274-2519
272-9409

March 29, 1977

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 204

Dear Representative Gardiner:

I am the President of the Board of Directors of Catholic Social Services, Inc., and the attorney for the agency. As you know, Catholic Social Services is the only licensed, private adoption agency in the State of Alaska. Sister Mary Clare, the Director of Catholic Social Services testified on Senate Bill 106 and House Bill 204 regarding the adverse affects of certain sections of this proposed legislation on the agency. I wish to add my comments from an attorneys point of view.

As you know, Catholic Social Services opposes the repeal of AS 20.15.180 which provides for relinquishment of parental rights (Section 18 of the bill) and the repeal of the prohibition against notice of publication in AS 20.15.100(b) (Section 9 of the bill). The relinquishment of parental rights section has been used by the agency to the exclusion of other methods since its enactment in 1974. During this time I have handled approximately half of the adoptions from Catholic Social Services ranging from 15 to 20 per year. In no instance has there been any difficulty or objection arising out of the use of the non-judicial relinquishment forms. In each case the natural parent or parents are counselled and informed of their rights by representatives of the agency who are in a far better position to deal with such delicate matters than the court. The adding of another judicial hearing will provide absolutely no protection or benefit to anyone and would cause only added embarrasment, time and cost. Unless the proponents of the repeal of Section 180 can point to specific wrongs or difficulties in the operation of that section with Catholic Social Services we strongly urge that it be obtained. We have no objection to the creation of a new petition process as an option

if anyone thinks that this is necessary. We simply request that the relinquishment section with which Catholic Social Services has been operating successfully be retained so that its important work can be continued with the same confidentiality and success that it has had ever since that Section 180 was adopted.

It should be pointed out that the proposed bill in regard to the relinquishment section actually takes away the right of the natural parent to choose how the child shall be adopted. At the present time the natural parent may choose to relinquish to the State, Catholic Social Services or directly consent to an adoption by a private party. Under the proposed change, voluntary relinquishment would be allowed only if the court decided where the child was to go, not the natural parent. If this bill were to be enacted in its present form, a parent desiring Catholic Social Services to place the child could never be sure that this request would be honored since the judge may ignore that request, and upon the representations of someone else, a relative or welfare, could refuse to allow Catholic Social Services the adoption.

Another reason given for the change in Section 180 is the granting of guardianship and custody in a more specific way which is alledged to be vague in Section 180. From the viewpoint of Catholic Social Services this is an unnecessary concern. No trouble has arisen concerning this matter and in any event it seems quite obvious that a relinquishment of parental rights to an agency carries with it all aspects of those rights, including care and custody so that the agency stands in the place of the natural parent. Moreover, since it is the policy of Catholic Social Services to work swiftly though carefully, placement occurs as soon as possible after the ten day revocation period provided in the relinquishment. The child does not wait around and is not shifted from foster parent to foster parent while tedious and unnecessary legalities are sorted out before courts. Catholic Social

Services considers that to be against the best interest of the child and the adopted parents under any set of circumstances. As a practical matter, therefore, there is no need to give the agency specific custody and control rights.

Section 9 of the bill would repeal the present sentence prohibiting notice by publication. This is a gross breach of confidentiality which can cause only harm and anguish to the parties involved especially to the natural parents who are pledged secrecy by the law and by Catholic Social Services. This notice requirement contained in the statute is for persons whose consent is not required for adoption. In most cases this is the unmarried natural father. The alledged reason for this repeal is that constitutional requirements require as much notice as possible. Presumably, the Legislative Affairs Agency is referring to the Stanley case where the United States Supreme Court held that an unmarried, natural father who actually had custody of the child had to consent to an adoption. The constitutional question therefore is not notice but consent and consent has been required by the court only in cases where actual parental rights were exercised by the claimant. To add notice requirements does not meet the real issue and in any event anticipates court decisions which had not yet occurred and may never occur. In the vast majority of cases unwed natural fathers have no interest in claiming their parental rights and certainly do not scan the fine print in the legal section of the newspaper to determine if a child is being adopted. The only result of this exercise of publishing notice in the newspaper therefore, is to breach the confidentiality of the adoption proceedings letting the unwed natural mother and presumably her relatives and acquaintances and the adopted parents know the circumstances of the birth and of the adoption. Again, this serves no purpose and causes an immense amount of harm to the parties involved. Under such circumstances, I suggest that the Legislature wait until the court orders such a requirement rather than anticipating something that may never happen.

Another reason for the repeal of this section is an alledged conflict with the Childrens Rules which provide that notice of publication may be given. Adoption proceedings in the Superior Court in Anchorage are not governed by the Childrens Rules but are rather governed by the ordinary Rules of Civil Procedure. In such cases, notice by publication is provided for a complaint and summons which is not what the adoption proceeding uses. Therefore, in my opinion, there is no conflict between the Rules of Civil Procedure and the present statute. Even if there is a conflict, it is because the previous statute failed to include the stated two thirds requirement for overruling the Rules. The remedy now should be not to repeal that sentence, but rather to make it clear that the prohibition of publishing notices of adoption proceedings does supersede the Rules.

It has been noted to you before that this bill which vitally affects the operation of the state's only licensed private adoption agency and the confidentiality of persons served by that agency was never discussed with Catholic Social Services prior to its introduction. The agency was not even aware that the law under which it operated was going to be so radically changed. As a result, we were therefore forced at this late date to enter our strong objections to the bill in its present form. We wish to emphasize that it is only to this portion of the bill relating to adoptions that causes serious problem. We do not object to any other portions of the bill. In order to expedite proceedings, we suggest that adoption matters simply be dropped from the consideration of the Childrens Code revision to be dealt with separately. As a separate matter, a full understanding of all the implications of adoption proceedings can be obtained.

The agency would be glad to furnish any information you would find necessary concerning its position on the proposed legislation. We believe that Catholic Social Services is providing a vital need in Alaska in a very sensitive area and providing it without a penny of the taxpayers money. We hope to continue to do so

but we do believe that the changes drafted by the task force would adversely affect this ability to serve.

Thank you for your consideration of our objections.

Very truly yours,

WOHLFORTH & FLINT

By For
Robert B. Flint

Ch. Code

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
JUNEAU COURT and OFFICE BUILDING
POUCH U
JUNEAU, ALASKA
99811

CHAMBERS OF.
ALLEN T. COMPTON, JUDGE

December 6, 1976

Ms. Betsey W. McGuire
Executive Director, Office of Child Advocacy
Pouch AL
Juneau, Alaska 99811

Dear Ms. McGuire:

Recently I received a copy of the legislative proposals prepared on behalf of the Children and Family Code Task Force. Although I have not had an opportunity to review them in detail, several items did catch my attention that I feel compelled to comment on.

I am particularly concerned with matters identified in Sections 1 and 2 of Mr. Brown's explanatory notes regarding amendments to Alaska's adoption laws. I don't know who feels "that persons who consent to adoption do not fully understand their rights concerning the adoption process or the meaning of their consent". Certainly I would concur in the thought that persons who do consent ought to both be completely informed and that they fully comprehend the information they have received. However, I fail to see any justification whatsoever for permitting the person who gives consent to be permitted to attend the adoption hearing. Presumably this is to enable the consenting person to have a "greater involvement in the adoption process", but the explanatory materials do not offer any suggestion as to why this is either necessary or desirable. Presumably the required disclosure of the identity of the adoptive parents, in place of the permissive disclosure, is an aid of such greater involvement. Again, I fail to see justification for such a requirement.

As I view the effect of the proposed amendments, a person who desires that their child be adopted could, upon seeing the consent form with the names of the adoptive parties there included, simply state that they think they know who the adoptive parties are and don't like them and therefore will not give consent. A person who has consented presumably could appear at the "first evidentiary hearing", and upon identifying the adoptive persons immediately prior to commencement of the hearing, preclude its ever commencing by simply delivering a handwritten note to the court that consent was revoked, even though the only reason for revoking the consent being that the consenting person did not happen to like the looks of the adoptive persons. Of course, since the consenting person would be advised of the names of the adoptive persons at the time the consent was signed, the consenting person could simply on his or her own determine the whereabouts of the adoptive persons, seek them out at their homes or places of business, determine from their looks or the places where they worked or lived that they were not acceptable adoptive parents and revoke consent. It takes little imagination to readily come up with similar scenarios. And what of the consenting person in Anchorage who gives consent to a child being adopted by persons living in Ketchikan? The consenting person has a right to be at the first evidentiary hearing, and apparently any other hearings as well. If the consenting person is impoverished, does that mean that the consenting person will be paid travel expenses to Ketchikan to attend the hearing? After all, the consenting person has a right to attend and it's certainly through no fault of the consenting person that the adoptive persons reside elsewhere. How are the adoptive persons affected by all of this? Are their footsteps going to be dogged by a consenting person who simply wishes to know how his or her natural child is being treated in life?

Perhaps these and other similar questions are simply too simple-minded to merit attention. If they do not merit consideration, I would of course wonder why not. If they have been considered, the explanatory notes certainly do not give any answers regarding their

resolution. There seems to be a shift from what is in the best interests of a child with respect to an adoption to whether the consenting person finds it to be in the best interests of the child that the child be adopted by certain persons. The consenting person seems to be in the position of saying that for whatever reason it is their desire that their child be adopted, but only if the adoptive persons are acceptable to the consenting person. While the consenting person is certainly entitled to every assurance that those persons who become the adoptive parents are decent, suitable people, whom a court would be inclined to find are proper parents for an adoption, as the proposal now stands it seems to me that it is totally unjustified.

(2) The second aspect of the adoption proposals I find somewhat troublesome is found in Section 3 of the explanatory notes and is in particular regard to deletion of the sentence "notice by publication may not be given". Certainly no one would quarrel with the statement that parents are entitled to "as much notice as possible". However, service of notice by publication is probably the least effective means of giving a person notice imaginable. A return to publication of notice would seem to be contrary to the legislative intention to protect the rights of all parties, "including but not limited to the right of privacy and the right to be notified." That statement is found in AS 20.15.100(c), which requires either the petitioner or the Department of Health and Social Services to conduct an investigation to assure that all persons required to be given notice are in fact located and given notice if at all possible. It would appear that the notice provisions of Section 100 were carefully drawn to assure that more than just a passing glance at the giving of notice is made. Certainly the contents of the notice are such in a given case that their disclosure could be extremely embarrassing to all persons concerned, including the child to be adopted. By not permitting publication as an easy out and requiring affirmative steps to locate the person to whom notice is required to be given, the legislature has seen fit to exact a higher notice standard than in many other matters. Of course, if it is the objective of the authors

Publishing notice

of this proposal to let a given community know that little Johnny Jones is in fact the illegitimate child of Mary Smith and that fellow who worked at the grocery store a few years ago, deletion of this proscription will lend itself thereto admirably. If that grocery store clerk left Haines, or Sitka, or Ketchikan, or Fairbanks, or probably even Anchorage, wherever it was he was living when the "event" occurred, a year or two ago, and the petitioner, presumably often the now husband of the natural mother, cannot locate the person through his known acquaintances or his family, publication of the notice in whatever town it was he was living in is no more than an expensive, useless gesture. (I am reminded of a recent case in which a taxing authority in a small community needed to give notice to a property owner regarding taxes due. The property owner's address did not appear on the deed by which the owner had gained title to the property, and since the property was unimproved land, there was obviously no one residing thereon to receive the notice. After having assured itself that the owner owned no other property in the community bearing any address, and not finding the owner listed in any city directory of that community, telephone or otherwise, and its agents were found to know of no such person in the community, the notice was published in the community's newspaper and a certified letter, return receipt requested, was sent to the person care of general delivery at that community's post office. Predictably, the person never got any notice, since the authority had already determined that the person wasn't there anyway. Catch 22.).

Thank you for giving me the opportunity to review these proposals and comment thereon.

Respectfully,

Allen T. Compton

ATC/bt

cc: Honorable Thomas B. Stewart
Honorable Thomas E. Schulz
Honorable Duane Craske
Andrew Brown, Esquire
Susan Burke, Esquire

Members file

TELEGRAM

ALASKA COMMUNICATIONS
PHONE 586-6440
JUNEAU, ALASKA 99801

#

02073 NL TDA CHUGIAK ALASKA 50 03-16 1147A AST
1977 MAR 16 PM 3 15

PMS REP 1606 GARDINER

JUN

RE HB204. ADOPTION RELINQUISHMENT PROCEDURES. PLEASE VOTE AGAINST THIS BILL -1. FEEL UNDUE HARDSHIPS TO MOTHER TO APPEAR IN COURT INSTEAD OF NOTARY FOR RELINQUISHMENT.

2. AGAINST MOTHERS CIVIL RIGHTS FOR JUDGE TO CHOOSE AGENCY INSTEAD OF MOTHER.

3. PUBLIC NOTICE IN NEWSPAPERS IS CRUEL.

MR AND MRS R W ROBINSON BOX 309 CHUGIAK ALASKA 99567

3/15/77

To: Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: HB204 (Reguarding the revision of the adoption code)
We understand that this bill requires that relinquishments be taken in court, rather than in front of a notary.

We are adamently against this change. What kind of emotional hardship, would be inflicted on the natural parents? What about the rights of the natural parents, and the child to privacy.

It is very difficult for a parent to relinquish a child for adoption. But possibly made bearable through counseling and privacy. What happens to the child through the waiting period, from birth to scheduled court hearing? Is not a Judges function to interpet the law? What kind qualifications will be used to decide which agency recievies custody? We understand that regardless of the natural parents wishes, they would have absolutely no voice in which agency their child would be placed. Further that public notice of the birth and relinquishment would be required. What about confidentiality!!!!!

If a change is to be made, then lets make it positive.
We suggest, if you wish to have protection for all parties concerned that you might consider allowing relinquishment only to an Agency Licensed by the State of Alaska as an Adoption Agency, with provisions that such agency provide counseling for the natural parent, liconsed foster care for the child for the 10 day waiting period between relinquishment and any adoption proceedings, and follow up services until adoption is finalized.

We do hope you give much considdration to this matter.

We would be most greatful if you would keep us informed on the status of this bill.

Sincerely,

Margaret M. Sergaard
3154 E 19th Ct.
Anchorage, Alaska 99504

Mary Talley
Dr. Etta Huff
Diane Evans
1571 Muriata
Anchorage 99504
Nancy J Yates
Donna Gordon

cbsrl.

Members files

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

April 5, 1977

Hon. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Children and Family Code

Dear Representative Gardiner:

I understand that the adoption and voluntary relinquishment provisions in H. B. 204 are being taken out and covered in separate legislation H. B. 419. I just wanted to write and let you know that I had some concerns with the adoption provisions and relinquishment provisions in H. B. 204, but generally, that Bill and S.B. 106 are good pieces of legislation, and I am hopeful that they can be passed this Session. If I can answer any specific questions for you, please don't hesitate to contact me.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Glenn Hackney

file HB204

(907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

March 24, 1977

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Dear Terry:

With regard to the children's code, it is my recollection that the Subcommission had decided not to include existing AS 11.15.110(1) in the Revised Code as the "doing any lawful act, by lawful means, with usual and ordinary caution and without lawful intent" would not be a criminal homicide under any circumstances as the defendant had not acted with a culpable mental state.

It seems that the bill is particularly concerned with the specific reference to "correcting a child" and wishes to eliminate that provision. I agree with your observation that you should withdraw sec. 4 from the Act as all of AS 11.15.110 (not just the section covering children) will be repealed under the Revised Code.

Sincerely,

Barry Stern

BS:pb

file members HB204

March 24, 1977

Mr. Gardiner:

It has been brought to my attention that there is a bill before the House, HB204, which will revise the current adoption code. Being an unwed mother who has just recently given her child up for adoption this bill will have no effect on myself, but I have compassion for those unwed mothers this bill would effect.

I understand that relinquishment of the child would have to take place in court rather than in front of a notary. It is difficult enough to give up a child whom one has carried for nine months without having to go down to the courthouse. My adoption proceedings were with Catholic Charities in which I signed the relinquishment papers in front of a notary. This can be a great deal easier for the unwed mother. If I had had to go to court to sign, it is very questionable whether or not I would have made it. Taking it to court makes the fact stand out, even more so than before a notary, that one has just given up her child. For most that is a hard enough fact to accept.

Secondly, I understand that the biological parent, or parents, will have no say as to what agency will be put in charge of the adoption proceedings. I have very strong feelings against this. I know that I myself chose Catholic Charities as the best agency to take care of my child. I believe that the parent should have the right of choice re agencies. Parents want to know their child has the best, and you can't know that if the judge makes the decision.

Thirdly, I do not believe the birth of the child need be made public unless the parents do not mind. The public need not know, it doesn't concern them, and they would probably pay little heed anyway. -1&3- It's an invasion of privacy in the true sense.

Thank you for your time. I hope this bill does not pass.

Sincerely,
Celeste Sozoff

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

March 31, 1977

Hon. Terry Gardiner
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

Please excuse the delay in my reply to your letter of March 11. I have taken the long look H. B. 204 as well as other legislation regarding children proceedings. I was a member of the Children's Code Task Force although I was only able to attend one meeting, the only reservations I have about the legislation concern the provisions on adoption and particularly the methods on obtaining parental consent or relinquishment of parental rights in adoption proceedings. I believe there was some confusion on the part of some of the Task Force members in that there appeared to be some question about whether a parent could ever consent to adoption by a particular adoptive parent or parents. It has always been possible to do this and I have had several cases in my court where that was done. However, the proposed legislation appears to me to make the procedures for obtaining either relinquishments to parental rights or consents to adoption unnecessarily cumbersome, particularly in those matters arising in rural or outlying areas in Alaska. I am further concerned that the length of time to withdraw consent to an adoption is probably too long. Usually by the time an adoption proceeding reaches the point of a petition being filed or parental rights being relinquished, the adoptive child has been in the custody of the adoptive parents for some time and attachments have begun to form both as far as the adoptive parents are concerned and

as far as the child is concerned. It seemed to me at the time of the Task Force meetings and it seems to me now, that the present time frame for withdrawal of consent is adequate given the circumstances of the usual adoption cases we have. Other than that, I have no particular comments on this legislation.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

THIS [X] BILL [ ] RESOLUTION

has been prepared by the staff of the Legislative Affairs Agency in response to the request and at the direction of the sponsoring member or committee. The staff has attempted to place the document in proper legal and clerical form, subject to any special limitations or instructions of the requestor.

Any staff questions or comments as to legality, constitutionality, and form have been included in the memorandum addressed to the requestor and kept in the work file. If we may be of further assistance in this matter, please contact the Director of Legal Services or the Director of Research Services, as appropriate.

Delivered to requestor 5-9-78

LA-L 40

Sec. analysis, Sec 8 of orig HB 204 Adoption, by Andrew Brown, Legis Affrs Atty for Children's Code Task Force

the consent, when in fact that is not so. Consent only facilitates the adoption proceeding which terminates the parents' rights only after a hearing under AS 20.15.120. Voluntary relinquishment of parental rights and responsibilities is separate from adoption, and the Task Force has clarified this point by creating a separate section in AS 25.20 on relinquishment of parental rights and responsibilities (see section 18 of this bill).

Section 8 would amend AS 20.15.070(b) by allowing withdrawal of consent at any time before the first evidentiary hearing on the adoption. The withdrawal would have to be given to the court, rather than the person obtaining the consent, so that the court, which already has the adoption petition in its docket, will be adequately informed of the withdrawal of consent. The allowance of withdrawal at any time prior to the first evidentiary hearing permits more time for the consenting person to evaluate the meaning of his consent and to make sure that is what he wants to do. Since adoption terminates the consenting person's rights to the child, it would be preferable to give him time to retract his consent. The present 10 day limit in §.070(b) is too restrictive, especially for persons in rural areas who may find it difficult to contact the court within that period. Withdrawal would also be allowed once the adoption hearing has started if the consenting person petitions the court and the court finds that there is good cause to allow withdrawal. The reason for the good cause requirement is to eliminate the possibility of capricious withdrawals during a hearing. Withdrawal up to the evidentiary hearing can be done for any reason, but it was felt that once an adoption hearing has been started and the lawyers, parties, and judge brought together, that only a good cause should be allowed to withdraw the consent. It should be remembered that while consent may be given, the court does not have to grant the adoption petition. Under AS 20.15.120(c) the court must consider the child's best interests. If a consenting person wants to withdraw the consent after the hearing has started, but does not have good cause grounds, the court may still rule on other grounds that the adoption not be allowed.

Section 9 amends AS 20.15.100(b) by adding "of this chapter" in the first sentence. Also, "under Alaska law" is inserted in the fourth sentence so that it is clearer as to its meaning any service of process consistent with Alaska law is permissible; even out of state service would be alright if done according to Alaska law. The sentence "Notice by publication may not be given." is deleted for two reasons. First, since adoption proceedings vitally affect the basic parent and child relationship, due process of law requires

exerts legal custody over the child.

Adoption Bill

Sec. Analysis by Dr. Roberta Gottesman

XX. Section 1(1).

Findings — This section requires that all natural parents contemplating the placement of their children for adoption must specifically name the adopting person.

Apparently this section was written in an effort to assure native Alaskans that their children would be adopted by their own extended families, rather than by any other non-native persons wishing to adopt children in Alaska.

However, the section would have the effect of discouraging all non-native natural parents, who insist on confidentiality and who wish to place their children for adoption. In addition, the requirement would discourage all potential adoptive parents who do not wish to know the names of the child's natural parents.

Observation — When meeting with the Children's Task Force, Roberta Gottesman, emphasized the importance of allowing names of parties to the adoption be withheld if all parties so desire, while, at the same time, authorizing those natural parents who desire to know the name of the adoptive parents to insist on it as their right before relinquishing their children.

Conclusion — Since the December 15 meeting, Section I - How Consent is Executed - has been rewritten. It now reads:

(A) Consent which does not name or otherwise identify the adopting parents is valid if the consent is executed at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgment.

Sec Analysis Dir Roberta Gottesman

treatment except in cases of emergency. Because a need for medical care could arise when parents are unavailable to give consent, there should be a distinction made between serious medical care (a decision best left to parents) and other necessary medical care, which should reside in the adult who has custody over the child.

XX - Adoption Bill - Section 1

It has been recommended that the Adoption Bill be revised to reflect the need for confidentiality of the parties where so desired, and the suggestion has been adopted. The new provision reads:

A. Consent which does not name or otherwise identify the adopting parent is valid if the consent is executed at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgment.

XXI - Section 4

It is essential to ensure, by statutory language, that adequate funding is made available in cases involving subsidized adoptions. Thus, the word "adequate" must be inserted in order to provide sufficient financial assistance to families who are otherwise qualified to adopt and would provide good homes for hard-to-place children.

XXII - Best Interest of Child Bill

In determining the best interests of the child under this section, the following judicial considerations should be taken into account:

1. Emotional and physical health of each of the parents.
2. Comparative environments.
3. Age and sex of the child.

Minutes
House Judiciary Committee
Saturday, 3/26/77

The meeting commenced at 10:30 a.m. on HB 204. Present were Gardiner, Brown, Specking and Eliason. Testimony was taken from Andrew Brown of the Office of Child Advocacy. Testimony commenced on page 8 of the bill dealing with voluntary relinquishment of parental rights and responsibilities. Due to the apparent controversy over that section and the section of adoptions, the Committee moved to delete that from HB 204 and reintroduce it as a seperate bill. The Committee heard testimony from Mr. Brown on a section by section basis through the remainder of the bill.

The Meeting adjourned at 12:00 p.m.

May 5, 1978.

Testimony recommendations - Klein ~~Goff~~ Kay K

1. Sec 11 → move to front of bill
   (now on p. 5, l. 4)
2. 20.15.060 (a) → use language from orig draft for consent section

3. Delete Sec. 4

4. Delete Sec 6 - amended last year
   " " 7 - " " "
   " " 9 - " " "

5. Page 6, line 3:
   add "such legal custody carries the right to consent to adoption"

6. Transmit instrument to court for filing and issuing an order.
   Delete (b) ? - go to court

Art Holmburg

p. 4, l. 27 → correct citation - AS ?

p. 1, line 16 → define who is authorized

Peggy Berke

1. objects to changing 20.05.060
2. move Sec 11 up in bill

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
645 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON

PETER ARGETSINGER
SARAH FORBES

TELEPHONE
AREA CODE 907
274-2519
272-9489

March 15, 1978

Representative, Terry Gardiner
Chairman
HOUSE JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99811

Re: House Bill 419

Dear Representative Gardiner:

On behalf of Catholic Social Services, Inc., I wish to make the agency's position known to the Committee on points that I understand were raised at the hearing on House Bill 419 by a representative of the Alaska Chapter of the National Association of Social Workers.

Catholic Social Services strongly supports the concept of a voluntary relinquishment as it now exists in AS 20.15.180 and in the Committee's bill on pages 6 and 7, lines 21 through 29 and 1-4 respectively. Under this concept, the relinquishment is made directly in writing to the agency. No court order or appearance of any kind is required. Our experience has been that this system works very well. We have had no problems with voluntary relinquishments and have never had the need for a court order. The agency feels that a court intervention at this point is unnecessary and indeed, potentially damaging to the parties involved. A judicial requirement at this time would only add to the complexities of the procedure as well as delay and expense. If a court appearance were required by the natural parent, additional hardship and embarrassment would result. It should be borne in mind that the court will always have the final say over the entire procedure in the adoption proceeding itself. There is thus, no reason at all for an earlier hearing. We therefore, oppose the position of the National Association of Social Workers in this regard.

We support the concept of Section 7 of the Bill which allows a home study to be done by the state adoption

staff or by an authorized agency. Presently, this section is limited to handicapped minors. There should be no reason why flexibility could not be given to the Commissioner to contract with a private adoption agency if the state agency is over-burdened.

We appreciate the opportunity to present our views on House Bill 419.

Very truly yours,

WOHLFORTH & FLINT

By _____
Robert B. Flint

RBF:vf

cc: Catholic Social Services

File HB419
Committee

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
645 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON

PETER ARGETSINGER
SARAH FORBES

TELEPHONE
AREA CODE 907
274-2519
272-9489

March 14, 1978

Representative Terry Gardiner
Chairman, House Judicial Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 419

Dear Representative Gardiner:

I am the president of the Board of Directors and attorney for Catholic Social Services, Inc. a licensed private adoption agency in Anchorage. I have been asked by Sister Clare, the Executive Director, to communicate the views of Catholic Social Services on House Bill 419 to the Committee.

Catholic Social Services is strongly opposed to Section 4 of the Bill which amends AS 20.15.100(b) to permit notice by publication in adoption proceedings. As it now reads notice of the hearing to those whose consent is not required is prohibited. We are opposed to this change for the following reasons:

1. Notice by publication does not accomplish anything as far as notifying the party intended. The person we are usually dealing with is the unmarried natural father of an infant. He has often left the community or has a very strong desire not to be involved. Notices in the newspaper simply do not reach such people.

2. The relinquishment, placement and adoption of illegitimate children is by its very nature an extremely sensitive process. It is most important to the mother as well as to the adoptive parents that confidentiality be preserved. The only thing notice by publication accomplishes is a breach of this confidentiality. The natural mother's personal life is detailed in the newspaper where the only likely people to read it are her family, friends, neighbors and the adoptive parents. In this way notice by publication serves only a negative purpose and indeed would be a cruel hardship on the parties involved. It is for this reason that the statute now prohibits notice by publication.

3. The proposed change would make the philosophy of subsection (b) conflict with subsection (c) of AS 20.15.100. Subsection (c) requires the investigation that must be made by the petitioners or someone on their behalf to be made in such a way as to respect the privacy of those involved.

4. There is no constitutional requirement yet laid down by courts for notice to an unmarried natural father. Such persons have no legal rights to a child unless paternity is established by legitimization proceedings or by court order. Only in Stanley v. Illinois did the Supreme Court declare that a father who actually had custody of his child had some parental rights. A recent Supreme Court case, Quilloin v. Walcott, held that those rights did not attach to an unmarried natural father who did not have the contacts with his child that Stanley did. Thus, we do not feel that there is any constitutional requirement that notice by publication be given especia ly in circumstances where the petitioner is required to attempt actual notice on the father. In this connection we do make such attempts in our adoption proceedings and have often succeeded in obtaining service.

As a minor change we would suggest deleting the word "proceeding" in section 11 of the Bill, page 5, line 6 at the end of that line. It is possible that someone might interprete the word proceeding as a court proceeding when in fact Chapter 35 will allow the voluntary relinquishment directly to an agency without a court proceeding. Since the word proceeding in this context does not add anything to the section and may be confusing we suggest that it be dropped.

Other than our strong feelings on Section 4 of House Bill 419 we have no objections to its passage.

Very truly yours,

WOHLFORTH & FLINT

By /s/ Robert B. Flint
Robert B. Flint

RBF/am

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

November 8, 1976

SUBJECT: The Adoption Bill

TO: Legislative Council

FROM: Andrew M. Brown

Alaska's current adoption statutes were enacted in 1974, based on the Revised Uniform Adoption Act. Although the statutes are of recent vintage, the Task Force saw some changes were necessary in order to better protect both parents' and children's rights.

Section 1 of the bill repeals and re-enacts AS 20.15.060 on how consent is executed. §.060(a) requires the consent to state the name of the person who is to adopt the child. This would allow the consenting parent to decide whether the adopting person would be a suitable parent for the child. §.060(b) would require that the consenting to adoption procedure be more informative of the parental rights involved. It was felt that persons who consent to adoption often do not fully understand their rights concerning the adoption process or the meaning of their consent. By requiring the consent to state specific things, it is hoped that consenting persons do not mistake the consent itself as relieving them of their rights and responsibilities toward the child, but that only the adoption decree terminates those rights and responsibilities. By specifying the consenting person can attend the adoption hearing and stating that the hearing will not take place less than 30 days after the consent has been signed, the consenting person has a chance for greater involvement in the adoption process and has more time to make sure that he really wants to consent to adoption. The current §.060(b) would be deleted, because it deals with permitting disclosure of the adopting person's name, while the proposed bill seeks to require disclosure.

Section 2 would amend AS 20.15.070(b) by allowing withdrawal of consent at any time before the first evidentiary hearing on the adoption. The withdrawal would have to be given to the court, rather than the person obtaining the consent, so that the court, which already has the adoption petition in its docket, will be adequately informed of the withdrawal of consent. The allowance of withdrawal at any time prior to

the first evidentiary hearing permits more time for the consenting person to evaluate the meaning of his consent and to make sure that is what he wants to do. Since adoption terminates the consenting person's rights to the child, it would be preferable to give him time to retract his consent. The present 10 day limit in §.070(b) is too restrictive, especially for persons in rural areas who may find it difficult to contact the court within that period. Withdrawal would also be allowed once the adoption hearing has started if the consenting person petitions the court and the court finds that there is good cause to allow withdrawal. The reason for the good cause requirement is to eliminate the possibility of capricious withdrawals during a hearing. Withdrawal up to the evidentiary hearing can be done for any reason, but it was felt that once an adoption hearing has been started and the lawyers, parties, and judge brought together, that only a good cause should be allowed to withdraw the consent. It should be remembered that while consent may be given, the court does not have to grant the adoption petition. Under AS 20.15.120(c) the court must consider the child's best interests. If a consenting person wants to withdraw the consent after the hearing has started, but does not have good cause grounds, the court may still rule on other grounds that the adoption not be allowed.

Section 3 amends AS 20.15.100(b) by adding "of this chapter" in the first sentence. Also, "under Alaska law" is inserted in the fourth sentence so that it is clearer as to its meaning any service of process consistent with Alaska law is permissible; even out of state service would be all right if done according to Alaska law. The sentence "Notice by publication may not be given." is deleted for two reasons. First, since adoption proceedings vitally affect the basic parent and child relationship, due process of law requires that the parents be entitled to as much notice as possible. Recent U.S. Supreme Court and Alaska Supreme Court decisions uphold the right to notice when one's interests are at stake. By deleting this sentence, the option of publication or posting is left for the court if other means of notice, such as personal service or certified mail, fail. The second reason for the deletion is that the sentence has no effect, because the legislative bill (HB 70) which became the present adoption law in 1974 did not expressly state that this sentence would change Children's Rule 10(g), which mandates publication in certain instances. Therefore, under Rule 40(e) of the Uniform Rules of the Alaska State Legislature the sentence would be ineffective. The added last sentence would require that the rights of notice applicable to adoption hearings also apply to termination proceedings under AS 47.10. Since both involve the termination of the parent-child relationship, the due process rights of notice should be applicable to both.

Sections 4 through 8 deal with the present adoption assistance law. AS 20.15.190 is the introductory section on adoption assistance. The Task Force has amended it so it reflects the purpose and extent of adoption assistance. The term "handicapped" has been replaced by "eligible for adoption," because "handicapped" implies a physical or mental condition of the child, while the Task Force thought that adoption assistance ought to apply not only to children with physical or mental problems, but also to those children whose adoptability is dependent on conditions of race, ethnic background, age, membership in a sibling group, color, or language. This assistance would also be applicable in cases where financial limitations impede families from adopting children. The Task Force found that the applicability of adoption assistance should be broadened, especially in view of the fact that for Fiscal Year 1976 assistance was given for only one child's adoption and for Fiscal Year 1977 assistance is being given for only eight "handicapped" children's adoptions.

Section 5 of the adoption bill eliminates some wording which is ambiguous. The deletion of "are caring for a handicapped minor on a foster parent basis and who" is to clarify that the assistance investigations shall apply to all applicants and not just those who are foster parents. This deletion also eliminates the implication that only foster parents are entitled to the adoption assistance. The word "handicapped" is deleted, because it is no longer relevant.

Section 6 involves a new section on information about availability of adoptable children and financial assistance to adoptive families. This amendment would require the Department of Health and Social Services to convey the information. The "special emphasis to rural communities" is inserted, because the Task Force felt that there could and should be more opportunities of adoption by Natives, but that a lack of information about the current assistance law thwarts the chances of the effective use of the law in rural areas.

Section 7 amends AS 20.15.210 by requiring the amount and duration of subsidy payments to be determined according to departmental regulations which have to be adopted. At the present time, the amount and duration is left to the department's discretion, and the Task Force thought this allowed for capacious and unregulated determinations, which were detrimental to implementing the adoption assistance law. The maximum amount of the subsidies would not be changed; it would not exceed the existing rate and benefits for foster care. There had been some concern over whether adoption assistance would affect state aid under other programs. To

remove this possibility a new sentence has been added to §.210 explicitly stating that a grant of adoption assistance subsidies would not affect eligibility or computation of resources and needs under the Aid to the Permanently and Totally Disabled Act in AS 47.25. It should be noted that adoption assistance is to help the whole family in the adoption process, while the assistance under the Aid to the Permanently and Totally Disabled Act aims to give financial aid to the disabled individual on the basis of his disability. Each kind of assistance has its own purpose and thus they should not offset each other. The final change to the adoption assistance law is repealing the definition of "handicapped child" in AS 20.15.240(7), because that term is unnecessary in light of the Task Force's recommendations on adoption assistance.

AMB:hjd

2730
11/5

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to adoption."

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

* Section 1. AS 20.15.060 is repealed and re-enacted to read:

Sec. 20.15.060. HOW CONSENT IS EXECUTED. (a) The required consent to adoption [shall specifically name the adopting person and] may be executed at any time after the birth of the child in the presence of the court or in the presence of a person authorized to take acknowledgments.

(b) All consents to adoption shall be executed in writing and shall give adequate notice that

(1) the person consenting to adoption has a right to appear at the adoption hearing;

(2) the hearing will not take place less than 30 days after the consent has been signed;

(3) the person consenting to adoption has the right to withdraw his consent at any time before the adoption hearing or after commencement of the adoption hearing upon a showing of good cause;

(4) the consent itself does not alter the consenting person's existing rights and responsibilities toward the child;

(5) the adoption decree terminates the consenting person's rights and responsibilities toward the child; and

(6) the person consenting must give his consent voluntarily.

* Sec. 2. AS 20.15.070(b) is amended to read:

(b) A consent to adoption may be withdrawn before the <u>first</u>

evidentiary adoption hearing [ENTRY OF A DECREE OF ADOPTION, WITHIN 10 DAYS,] by delivering written notice to the court. After commencement of the hearing and before entry of a decree, a consenting person must petition the court in order to withdraw his consent. The petition shall be granted only upon a showing of good cause [PERSON OBTAINING THE CONSENT, OR AFTER THE 10-DAY PERIOD, IF THE COURT FINDS, AFTER NOTICE AND OPPORTUNITY TO BE HEARD IS AFFORDED TO PETITIONER, THE PERSON SEEKING THE WITHDRAWAL, AND THE AGENCY PLACING A CHILD FOR ADOPTION, THAT THE WITHDRAWAL IS IN THE BEST INTEREST OF THE PERSON TO BE ADOPTED AND THE COURT ORDERS THE WITHDRAWAL].

* Sec. 3. AS 20.15.100(b) is amended to read:

(b) Notice to persons specified in sec. 50 of this chapter shall include a statement of the grounds under which consent to the adoption is not required. Notice given under this section shall be adequate to give actual notice of the proceedings, taking into account education and language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of hearing shall contain all names by which the minor has been identified and shall state in summary form the effect of a decree of adoption. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law [IN THIS STATE] or in any manner the court by order directs. [NOTICE BY PUBLICATION MAY NOT BE GIVEN.] Proof of the giving of the notice shall be filed with the court before the petition is heard, subject to the time limitation in (e) of this section. The manner of notice specified in this section shall be applicable to termination proceedings under AS 47.10.080(c)(3).

* Sec. 4. AS 20.15.190 is amended to read:

Sec. 20.15.190. ADOPTION ASSISTANCE. A [HANDICAPPED] minor eligible for adoption [IN THE PERMANENT CUSTODY OF THE DEPARTMENT IN A

FOSTER HOME FOR NOT LESS THAN ONE YEAR] may not be denied the opportunity for a permanent home if an adoptive placement could be achieved through financial assistance as authorized by this section. It is the purpose of adoption assistance

(1) to encourage and promote the adoption of children who are hard to place due to the fact that they have special needs by reason of physical or mental condition, race, ethnic background, age, membership in a sibling group, color, language, or other conditions; or

(2) to assist financially those persons who otherwise qualify to adopt children but cannot due to a lack of financial resources [THE ACHIEVEMENT OF THIS DEPENDS ON CONTINUED SUBSIDY BY THE STATE].

* Sec. 5. AS 20.15.200 is amended to read:

Sec. 20.15.200. INVESTIGATION. Persons who [ARE CARING FOR A HANDICAPPED MINOR ON A FOSTER PARENT BASIS AND WHO] have applied to adopt the minor and to receive payments for the care and support of the [HANDICAPPED] minor shall be evaluated as to their suitability as adoptive parents by means of an adoptive home study. This home study shall be made by the commissioner's adoption staff or on his behalf by an authorized agency which provides adoption services.

* Sec. 6. AS 20.15 is amended by adding a new section to read:

Sec. 20.15.205. INFORMATION. The department shall disseminate information throughout the state with special emphasis to rural communities regarding the availability of adoptable children and financial assistance to adoptive families under this chapter.

* Sec. 7. AS 20.15.210 is amended to read:

Sec. 20.15.210. AMOUNT AND DURATION OF SUBSIDY PAYMENTS. Upon application by the prospective adoptive parents, the amount and duration of the subsidy shall be determined by the department according to regulations which the department shall adopt according to the

Administrative Procedure Act (AS 44.62) [THE MONTHLY PAYMENT AND THE LENGTH OF TIME FOR WHICH A SUBSIDY FOR A HANDICAPPED CHILD IS GRANTED ARE LEFT TO THE DISCRETION OF THE COMMISSIONER] and the subsidy may vary in [FROM A SMALL MONTHLY SUM TO AN] amount but may not exceed [NOT EXCEEDING] the existing rate and benefits for foster care until the child reaches the age of majority, if the need continues to exist. Subsidies shall be paid from the same public funds and in the same manner as foster care payments. The grant of subsidies made under this section shall not affect the eligibility of an adoptive child for aid under AS 47.25.790 - 47.25.970, and the amount of the subsidies made under this section shall not be used in any computation of resources and needs under AS 47.25.810.

* Sec. 8. AS 20.15.240(7) is repealed.

LA-L 20

MEMO May 5, 1978

TO: Terry Gardiner, members of House Judiciary Comm.

FROM: Bob Speed, A.A.

RE: HB 419, Adoption and voluntary relinquishment of parental rights.

The only hearing held on this bill was conducted on March 14 this session. Below is a list of recommendations regarding the bill by Pudge Kleinkauf, Art Holmburg and Peggy Berck.

Cecilia Kleinkauf, National Association of Social Workers, member of the Children's Code Task Force:

1. Section 11 should be moved up nearer the top of the bill. A consent form should contain the name of adoptive parents. She also preferred the way the Children's Code Task Force dealt with consent in the original version of this legis. (Sec. 11 is now on page 5, line 4 of HB 419.) The consent The consent section leav es a vague status of a child's legal rights as currently written.
2. Section 4. (page 2 of bill) The putative father who has never established a relationship with a child does not need to be notified of relinquishment of parental rights or adoption. She suggested deletion of Section 4.
3. Delete Sections 6, 7 and 9; the definition section is satisfactory, although she later said she is "not comfortable" with the definition of "written instrument".
4. On page 6, line 3, add: "such legal custody carries the right to consent to adoption".
5. Sec. 12, Relinquishment. Relinquishment should not be tied to a child's adoptability.
6. Definition of "written instrument": Saying she was uncomfortable with this definition, she suggested adding a new subsection (c) to read "could be transmitted to court for an order allowing relinquishment" and relettering the following subsections.

Art Holmburg, Division of Social Services:

1. Suggested deletion of Sections 4, 6 and 7.
2. testified that the wrong statute citation may be given on page 4, lines 27-28.
3. P. 1, Line 16: define who is authorized to take acknowlegements

Margaret Berck, Alaska Legal Services:

1. Objects to changing 20.15.060 as advocated by Kleinkoff.
2. Has no problem with way bill is currently drafted although bush justice lawyers might "strongly object" to Sec. 2 of bill
3. Move Sec. 11 closer to top of bill

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1978

To: House Judiciary Committee

From: Bob Speed, A.A.

Re: HB 419

The director and attorney for Catholic Social Services of Anchorage intends to send a letter to the committee regarding Sec. 4 of this bill.

Catholic Social Services objects to deletion, on page 3, lines 7-8, to the restriction against notification by publication. The agency feels the section should be retained, arguing that notification by publication gives unnecessary embarrassment to the woman and family involved and serves no positive function. Public notification, they argue, is also inadequate notice of proceedings under this bill.

POSITION PAPER/Department of Health and Social Services

House Bill Number 419

"An Act relating to adoption and voluntary relinquishment of parental rights"

This Bill constitutes recommendations of the Children's Code Revision Task Force regarding certain statutes pertaining to adoption.

The changes proposed in the Bill are, in our judgement, appropriate both in the interest of children and their parents and in the interest of clarifying intent, roles and responsibilities.

It is recommended, however, that a section be added to the Bill to the effect that duly authorized officials of adoption placement agencies licensed under AS 47.35.100 are authorized to take acknowledgements as specified in Sec. 2 (AS 20.15.060 as re-enacted) of the Bill. In our judgement, this addition is proper and is in keeping with the safeguarding intent underlying the Children's Code Task Force recommendations. Protections provided through the licensing process will adequately ensure that parents are not misled in relinquishments.

The Department supports the Bill with the recommended additions.

Recommended By: _____ Date: 4-5-77
Director

Approved By: _____ Date: 4/5/1977
for Commissioner

Comments by Governor's Office:

Comments By: _____ Date: _____

PBob-Wolfe on HB 419

TO: Alaska Legal Services, ATTN: Don Cloxsin
Bush Justice Conference
Alaska Division of Social Services, Faye Guthrie
Attorney General's Office, Dave LeBlond
Catholic Charities, Sister Mary Clare
Alaska Children Services, John Garvin
Alaska League of Women Voters, Jean Stassel

FROM: Alaska Chapter, National Association of Social Workers,
Cecilia Kleinkauf, Social Action Coordinator

RE: HB 419 - Adoption and Termination of Parental Rights

DATE: February 23, 1978

During a recent trip to Juneau, HB 419 regarding adoption was discussed with Representative Terry Gardiner in regard to preparing for a hearing on the Bill in March before the Judiciary Committee of the House. You will recall that HB 419 was originally part of the Children's Code Bill which passed last session. HB 419 was held back due to the need for more discussion and review of its contents. Revision of Alaska's Adoption Laws is a priority of Alaska Chapter, NASW during 1978.

This memo, therefore, is to invite you to join with NASW at 3:00 on Thursday, March 9, for a review of HB 419 and a discussion of areas of agreement-disagreement which may exist within our various groups and organizations.

Representative Gardiner is prepared to notify our organizations of his plans for hearing HB 419, and suggested we initiate some discussion prior to that time.

We will meet in Room 367 of the College of Arts and Sciences, University of Alaska - Anchorage (Consortium Library Building) and hope that you will be able to attend or send a representative and that you will be able to review HB 419 prior to the meeting.

If you need more information, you can reach me at 272-5522. Otherwise we will see you at 3:00 P.M., Thursday, March 9th.

CK/lw

cc: Senator Chancy Croft
Representative Terry Gardiner
Margaret Wolfe
Betsey McGuire

Child Welfare League of America

Standards

available if the court either needs additional information or desires to discuss the matter with the agency representative in private.

If the child is old enough to make his consent necessary or to understand what his adoption means even if his consent is not necessary, he should be present.

7.23 Confidentiality in court procedure

Court procedures should assure confidentiality for the parties concerned.

Hearings on adoptions should be closed to the public. The identity of the natural and adoptive parents should be protected from each other.

All records of the court concerning adoption should be sealed and should not be open to inspection except on court order.

Legal Protection Required for Adoption Service [24, 64] *

An adoption service should operate within a framework of law to protect the rights and interests of all parties involved in adoption. Such framework includes laws governing the adoption procedure itself, and related laws affecting relinquishment and termination of parental rights, determination of custody and guardianship of children, and regulation of child placing services. Legal protections required in adoption should assure that

- the best interests of the child are paramount
- parental rights and responsibilities are safeguarded
- the child will neither be unnecessarily deprived of his own parents nor of a permanent home of his own
- legal responsibility for the care and protection of the child will be clearly established at all times
- no child will be placed in a home that may be unsuitable for him or detrimental to his well-being and healthy development
- an adoptive placement will be secure and stable

7.24 Elements in adoptive process

The essential elements necessary to bring about an orderly adoption process should include

* It is not intended that this section should serve as comprehensive recommendations for adoption legislation. It does not include all the protections required for non-agency adoptions (stepparent, relative or independent adoptions), but merely indicates the legal protections which are required in order to assure that adoption service provided by social agencies should be consistent with these standards. (See *Legislative Guides for the Termination of Parental Rights and Responsibilities and The Adoption of Children*, Children's Bureau Publication No. 394, [1961].)

- legal separation of child from his natural parents (7.25)
- transfer of parental or custodial rights over a child through assignment of legal custody and guardianship (7.26, 7.29-7.31)
- provision for consent to a specific, proposed adoption (7.29)
- transfer of parental rights and responsibilities to adoptive parents after suitability of proposed adoption has been determined (7.34)

7.25 Legal separation of child from natural parents

No child should be considered legally free for adoption until parental rights have been terminated through proper legal procedures, prior to any steps being taken toward adoption.

In our culture and under our law, the biological parents, or, if they are not married to each other, the mother, have the right to custody and control of children born to them, and along with it the responsibility for their support, care and upbringing. In all states the responsibility of guardianship belongs to parents in the first instance. The rights of the parents must be exercised for the child's benefit and, if they are not, must yield to the child's interests.

A parent may not divest himself of his responsibility for the care of a child except through process of law and with full protection of the child.

The termination of parental rights is as important as the establishment of new parental ties through adoption and should be as securely safeguarded. Procedures regulating termination of parental rights should be covered in law and be separate from adoption. (7.26)

7.26 Legal sanction for relinquishment* and termination of parental rights

For the protection of the child, the natural parents, the adoptive parents, and the agency, legally binding termination of parental rights and the establishment of a recognized legal status between the child and the agency should take place prior to any steps being taken toward adoption.

Termination of parental rights and relationships involves and alters basic human and property rights. The full protection of those rights ideally requires court approval. The legal presumptions against fraud and duress created by court approval make judicial procedures clearly superior in principle.

Some states have statutory procedures which permit the relinquishment, without court approval, of a child by its parent or parents to a public welfare department or licensed child-placing agency. In those states such a relinquishment is deemed, in the absence of fraud or duress, to terminate the

* The terms 'surrender', 'release', and 'relinquishment' have essentially the same meaning in relation to law and represent instruments of voluntary giving up of parental rights. The term 'relinquishment' is used by preference, since the definition of 'relinquish' is "to renounce a claim to." These terms in relation to adoption should not be confused with 'consent'. (7.29).

parental right and to establish a legal relationship between the child and the department or agency sufficient to give exclusive power to the department or agency to consent to a later adoption of the child. This non-judicial procedure has worked successfully in many of the states in which it is authorized, and has certain practical advantages over a formal court-approved relinquishment which may entail either delay in placement of the child or recurrence of emotional conflicts in the parent who has come to the decision to relinquish a child.

Statutory provision for relinquishment of children to authorized social agencies presupposes that necessary protections are assured by the services offered by such agencies; by casework which gives the parents every opportunity to consider alternatives and to reach a decision that is right for them or in the best interests of the child; and by acceptance of the relinquishments only when parents are ready to give up their rights (as well as their responsibilities) forever, and to recognize that this is a final decision. (2.1-2.4, 2.20)

Agencies acting under these statutory procedures and without the protection afforded by court approval should, however, be fully aware that the adoption procedures may be attacked by the natural parent or parents for alleged fraud or duress in the procurement of the relinquishment, unless such attack is barred by the statute of limitations; and, even when it is unfounded, such attack may seriously damage the adoption process.

The use of informal relinquishment procedures, blank consents by the natural parents, or any other procedure which has the result of postponing the time of permanent termination of parental rights until actual entry of the adoption decree, is hazardous and fails to serve the interests of the parties to whom the child-placing agency has a major obligation.

When court approval is sought, it is essential that it be made available without undue delay. This is necessary so that the child may be legally free for adoption as early as possible, and particularly necessary so that early placement of infants may be expedited. (2.19, 3.8, 3.9)

The court should be in a position to proceed in the natural parents' absence and to finally terminate their rights, if, after due notice of the hearing, they either voluntarily waive their right or elect not to appear.

Termination of parental rights should as a rule be the result of recommendation by a qualified social agency. It is presumed that only through professional casework can there be adequate determination of the desirability of terminating parental rights. (2.2, 2.15)

The determination of adoptability of the child should not be a prerequisite to termination of parental rights and responsibilities where such termination is otherwise desirable. (1.3)

7.27 Finality of relinquishment

A relinquishment, whether with court approval or by statutory procedure, should be permanently binding and should be set aside only on proof of fraud

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7.28 Deprivation of p

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7.29 Legal custody*

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† 'Consent' means
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or duress, and even under these circumstances should be subject to a statute of limitations. A relinquishment to an authorized agency should not be subject to revocation by reason of minority of the parent. (7.26)

7.28 Deprivation of parental rights

There should be legal provision for termination of parental rights in the interest of the child, through proper judicial process, where it has been determined that, even with help of community agencies, the parents in all probability will not be able to perform their parental duties, and are either unable or unwilling to relinquish the child. (2.7)

> Situations in which it should be possible to request termination include such cases of abandonment, neglect, and mental illness in which parents have clearly shown no interest, desire or capacity for giving the child the love, care, and protection he needs, and in all probability will not be able to do so; and cases in which they are unable or unwilling to use help of community resources in order to do so.
>
> These instances also include children who have been left in the care of others (including foster care agencies) beyond a stated period of time, and whose parents show either a lack of continuing interest or lack of ability to give proper parental care, protection, and the security of a permanent home. (6.12, 7.6)
>
> In such cases, the rights of the child should take precedence over both the rights and wishes of the parents.

7.29 Legal custody* and right to consent to adoption†

Concurrent with either relinquishment or termination of parental rights, there should be legally binding action to transfer responsibility for the child to an agency authorized by law to assume both the power and duties of legal custody, and the right to consent to an adoption. (7.26)

> The further consent of the parents (or mother) to an adoption should not be required when parental rights have been terminated.

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* 'Legal custody' means a status created by court order that embodies the following rights and responsibilities: (1) the right to have the physical possession of the child, (2) the right and duty to protect, train, and discipline the child, and (3) the responsibility to provide the child with food, shelter, education, and ordinary medical care, provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree. (From: *Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children*, p. 38, 50)

† 'Consent' means voluntary agreement to or concurrence in some act or purpose. The term 'consent' in relation to child adoption is a written statement in which the person or agency, having the legal right to act, *consents to a specific, proposed adoption* and is fully aware of the contents of the document, including the names of the adopting parents.

care could arise when parents are unavailable to give consent, there should be a distinction made between serious medical care (a decision best left to parents) and other necessary medical care, which should reside in the adult who has custody over the child.

XX - Adoption Bill - Section 1

It has been recommended that the Adoption Bill be revised to reflect the need for confidentiality of the parties where so desired, and the suggestion has been adopted. The new provision reads:

A. Consent which does not name or otherwise identify the adopting parent is valid if the consent is executed at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgment.

XXI - Section 4

It is essential to ensure, by statutory language, that <u>adequate</u> funding is made available in cases involving subsidized adoptions. Thus, the word "adequate" must be inserted in order to provide sufficient financial assistance to families who are otherwise qualified to adopt and would provide good homes for hard-to-place children.

XXII - Best Interest of Child Bill

In determining the best interests of the child under this section, the following judicial considerations should be taken into account:

1. Emotional and physical health of each of the parents.
2. Comparative environments.
3. Age and sex of the child.

HB
456

AMENDMENT

Offered in the HOUSE By the Judiciary Committee

TO: HOUSE BILL NO. 456

Page 1, lines 11-12:

Delete "Each justice, judge, or full-time magistrate" and insert the following:

(a) Except as provided in (b) of this section, each justice or judge

Page 1, line 12:

Delete "1977" and insert "1978"

Page 1, line 13:

After "ch. 25" insert "or ch. 28"

Page 1, lines 13-14:

Delete "justice, judge, or full-time magistrate" and insert "justice or judge"

Page 1, line 14:

Delete "accrues" and insert "and all full-time magistrates accrue"

Page 1, between lines 15 and 16:

Insert the following:

(b) A justice or judge appointed before July 1, 1978, who receives an increase or increases in salary after July 1, 1978, equivalent to or

greater than seven per cent of his salary as of July 1, 1978, accrues benefits under and is subject to the provisions of this chapter.

Page 5, line 15:

Delete "1978" and insert "1979"

Page 6, line 18:

Delete all material

Page 6, line 19:

Change "Sec. 3" to "Sec. 2"

Delete "1977" and insert "1978"

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501
(907) 274-8611

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

March 3, 1978

The Hon. George Hohman, Chairman
Senate Judiciary Committee
Alaska Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 461
Magistrate Retirement

Dear Senator Hohman:

This letter is intended to supplement our oral testimony on Senate Bill 461 by providing a written record of our views in opposition to this bill.

The inclusion of "full-time" magistrates in the judicial retirement provisions of AS 22.25 raises both philosophical concerns and technical problems. With respect to the philosophical concerns, we do not believe that including magistrates in the judicial retirement system is necessary or appropriate. The judicial retirement system is obviously more generous than the Public Employees Retirement System under which all magistrates now accrue benefits. However, there are particular purposes for providing the more generous system for judges. These purposes do not apply to magistrates.

The two primary purposes of the judicial retirement system are: 1) to attract lawyers of the highest possible qualifications at the peak of successful law careers and to keep them on the bench once appointed, and 2) to provide an inexpensive source of temporary judicial assistance by way of pro tem appointment of retired justices and judges. The field of recruitment for judges is limited to the practicing Bar. The field is even further reduced with respect to applicants for the Supreme and Superior Courts who must have five and eight years of active practice,

respectively, to qualify. A distinctive retirement system is simply not required to attract well-qualified applicants for magistrate positions. In this sense, magistrates are much more comparable to classified state employees. Experience demonstrates that we have not had difficulty attracting and keeping well-qualified persons as magistrates.

With reference to the second purpose of judicial retirement, a higher retirement benefit than provided to public employees generally is justified because retired justices and judges who are receiving retirement pay are subject to being recalled to judicial service on a temporary basis. (Compensation for such service is limited to the difference between full salary and retirement pay.) If temporary judicial assistance is required at the Supreme or Superior Court level, the only constitutionally permissible source of temporary assistance is retired justices and judges. The retirement benefits must be high enough to permit these justices and judges to avoid financial pursuits during retirement that will interfere with their impartiality when recalled to pro tem service. Any citizen over 21 years of age can be appointed as a magistrate on a temporary or acting basis, and the level of work performed by magistrates is not so specialized that temporary assistance cannot be obtained from sources other than retired magistrates. Typically, when temporary magistrate service is required, a classified employee is appointed on an acting basis.

It is Court System policy to treat all magistrates the same for purposes of retirement benefits. The workload and the type of duties typically required vary from one magistrate post to the next, depending upon a number of factors such as population served, the level of local law enforcement activity, and the availability of a District Court judge. Yet, all magistrates are empowered to exercise the same jurisdiction, and are on call 24 hours a day to hold arraignments, set bail and so forth. In part for this reason, and in part because of the difficulties of making distinctions among the magistrates, we consider all magistrates as full-time for purposes of eligibility for P.E.R.S. membership.

There are also several technical problems with Senate Bill 461 as written. The first is the difficulty in defining who is and who is not a "full-time" magistrate. Though we cannot suggest how this distinction could or should be drawn, we do wish to point out that there may be difficulties in establishing the criteria.

For example, we are currently required to apply statutory leave benefits under AS 39.20 to magistrates who serve "full-time." We make this distinction solely on the basis of the number of hours required to be spent on the job and not on the basis of the types or levels of duties performed, which tend to be a combination of clerical and judicial duties. The time required to be spent on the job at any given magistrate post may fluctuate over a period of time depending on the total volume of workload, and a magistrate post that is now "full-time" for application of leave benefits may become "part-time" for this purpose if workload requirements diminish. Thus, there may be shifting back and forth between "full-time" and "part-time" status if "full-time" is to be defined under the bill as working 37.5 hours a week. There is also a great deal of variance among all magistrate posts in the level and complexity of duties performed, and these may also fluctuate over time at a particular post.

Further, there are several full-time classified employees who also hold magistrate appointments. For example, the clerks of court in Bethel and Anchorage hold magistrate appointments, as do the coroner/public administrators and the law clerks in Ketchikan and Kodiak. Additionally, some full-time clerks of court are acting magistrates who are empowered to perform magistrate duties when the magistrate or District Court judge is absent from the post. It is not clear whether these full-time employees are intended to be included in the bill.

Obviously, it is important to be able to know clearly who is and who is not included in a retirement system, and it may be difficult to draw distinctions between magistrates that will be certain to remain applicable throughout the entire tenure of an individual magistrate.

Another technical difficulty with the bill is that it is unclear how benefits for magistrates would be calculated under AS 22.25.020. That section provides that retirement pay shall be equal to a certain percentage of the salary currently being paid for the level of court from which the justice or judge retired. This is a fairly simple calculation for Supreme Court justices, Superior Court judges, and District Court judges, since there is only one salary for each level of court. This is not the case with magistrate salaries.

At the present time, there are three basic salary levels for magistrates. In addition, incumbents of certain

posts are paid at salaries higher than the three basic levels primarily because of individual talents and capabilities. When the present incumbent resigns or retires from one of these posts, the salary for that post will be re-evaluated and may very likely be reduced. Workloads and conditions at magistrate locations will fluctuate over the years, and some posts may even be abolished if magistrate services are no longer required there. In addition, the salary for a post may fluctuate depending on current caseload. For example, the salary for the magistrate post at Nenana recently went from $21,000 annually to a Level II base salary of $13,972 annually. Thus, there is no single, stable salary base on which to calculate magistrate retirement on a current salary basis as is done with the justices and judges under AS 22.25.020. In addition, the bill does not address the question of how to deal with the magistrates' geographic cost-of-living salary differential in the calculation of retirement benefits.

In summary, we do not believe that the judicial retirement system should be extended to magistrates. If the Legislature determines that magistrates should be entitled to enhanced retirement benefits beyond those currently provided under P.E.R.S., it might wish to consider applying to magistrates provisions similar to those applicable to the peace officers and firemen under P.E.R.S. under which these employees make a higher contribution and receive a higher percentage benefit for each year of service credit.

We appreciate the opportunity to provide our comments on this bill.

Very truly yours,

Arthur H. Snowden, II

Arthur H. Snowden, II
Administrative Director

Contributory Judicial Retirement Sys.
HB 456

Jerry D

Mike Miller asked
me to let you know
that Carl Heinmiller of Haines
is very interested in HB 456
& would like to be advised
of proceedings re: this bill.
Thanks.

Stilo

Also - Jerry - Al says
B. Ball @ 9 is at Floyd Dryden
on Tues. nites - Hardly anyone
in that gym, so it's fun.

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 456

The board endorses the attached fiscal note as its fiscal analysis of HB 456.

The board unanimously recommends that HB 456 do not pass; one member was absent.

The board favors the creation of a contributory and funded judicial retirement system but questions whether magistrates should be included within the judicial system. SB 90 would accomplish the funding and contribution objectives without including magistrates, and is recommended.

A M E N D M E N T

IN THE HOUSE

TO: House Bill No. 456

Page 1, line 12:

change "1977" to "1978"

Page 5, line 15:

change "1978" to "1979"

Page 6, line 19:

change "1977" to "1978"

SUMMARY OF HOUSE BILL NO. 456

(assuming adoption of amendments suggested by Legislative Affairs Agency)

Retirement system affected: Contributory Judicial Retirement System (established by a bill)

Establishes a contributory judicial retirement system for supreme court justices, superior court judges, district court judges, and district court magistrates appointed after July 1, 1978 (hereinafter, members). Requires a member to contribute seven per cent of his salary to the system.

Directs the state to make contributions to the system in accordance with a rate established by the commissioner of administration. Requires that the rate be sufficient, in conjunction with employee contributions, to properly support the benefits of the system.

Establishes the contributory judicial retirement account for appropriations to fund the system. Directs that an individual account be maintained for each member to which his mandatory contributions are credited. Directs semi-annual crediting of interest to individual accounts. Authorizes a refund of the balance of a member's account on termination of judicial servie with forfeiture of rights to benefits. Provides that if a member who has withdrawn his balance returns to permanent service he shall receive credit for prior service only if he repays refunded contributions within one year after his return.

Enacts provisions identical to those of the present Judicial Retirement System with respect to retirement of members, retirement pay, survivor's benefits, tax exemption of benefits, and medical benefits. The only exception to this is that the present Judicial Retirement System provides for crediting service as a magistrate or deputy magistrate before July 1, 1967 while the Contributory Judicial Retirement System does not.

Takes effect July 1, 1978.

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 456
Title Establishes A Contributory Retirement for Judges and "Full-Time" Magistrates
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected: Administration - Division of Retirement & Benefits
Program Category Affected: Retirement and Benefits
Budget Request Unit(s) Affected: Contributory Judicial/Full-Time Magistrates Retirement System

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
100	BENEFITS		259.7	300.9	345.5	393.9	446.3
	TOTAL	-0-	259.7	300.9	345.5	393.9	446.3

FUNDING (Thousands of Dollars)

GENERAL FUND	259.7	300.9	345.5	393.9	446.3	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

1. Fiscal note represents cost on a funded basis for the inclusion of past and future service for existing full-time magistrates under Non-Contributory Judicial Retirement System (AS 22.25).
2. Fiscal note includes costs on a funded basis for future full-time magistrates, judges and justices under HB 456.
3. Fiscal note does not include the cost on a funded basis for the existing Judicial System (AS 22.25) (these costs identified in fiscal note for SB 91--first year cost equals $1,832.7).
4. The Alaska Court System cannot provide a definition for "full-time" magistrate (see attachment), so for purposes of this fiscal note all magistrates earning $15,000 or more per year were considered full-time (16 out of 50) with an average salary of $24,939.
5. Assume that 3 new judges are appointed each year starting FY 79 at a salary of $46,061 per year (weighted average salary for Supreme, Superior and District Judges) and that 1 new full-time magistrate is appointed each year starting FY 79 at a salary of $24,939 per year (also assumes attrition of 1 full-time magistrate under AS 22.25).
6. Assume salaries are increased at 5% per year.
7. Employer contribution rate of 58.34% of covered payroll is required.

IV. DATE 3/01/78 PREPARED BY Paul B. Arnolet
AGENCY Division of Retirement & Benefits
PHONE 465-4460

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Malone
Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

Alaska Court System

State of Alaska

303 "K" STREET

ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

907 · 274-8611

April 12, 1978

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 456, Judicial Retirement

Dear Representative Gardiner:

You have asked for written comments from us concerning the proposed committee substitute for House Bill 456. The proposed substitute would make essentially three changes in the existing judicial retirement system. First, it would provide that justices and judges appointed after the effective date would be required to contribute seven percent of salary toward retirement. Second, the proposed substitute would provide that sitting justices and judges would be required to commence contribution of seven percent of salary upon receiving a salary increase equal to or greater than seven percent. Third, the proposal would include "full time" magistrates in the contributory judicial retirement system established by the bill.

There are no constitutional prohibitions against imposing retirement contributions on newly appointed justices or judges. There are, however, substantial questions about the constitutionality of requiring contributions from justices and judges who are now accruing benefits under the non-contributory system. The constitutional problems arise from provisions of both the Alaska Constitution and the United States Constitution.

Article IV, section 13 of the Alaska Constitution provides, in part, "Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the state." Clearly this provision would prohibit the imposition of contributions from the present salaries of sitting justices and judges, as that would result in a direct diminution of salary applicable only to justices and judges. The question then is whether this prohibition can be successfully avoided by imposing the contribution simultaneously with an equivalent pay raise.

This prohibition on diminution of compensation was not intended as a private grant or benefit for justices and judges, but as a limitation imposed in the public interest to help secure an independent judiciary and help maintain the delicate balance of power between and among the separate branches of government. As such, it is not to be construed restrictively, but in accord with its spirit and purpose. Evans v. Gore, 64 L.Ed. 887, 892 (1919). In this light, then, giving a salary raise with one hand and taking it away with the other may be viewed as an indirect diminution that is nonetheless within the constitutional prohibition.

Apart from the question of whether it is permissible to impose on sitting justices and judges a contribution simultaneously with a salary increase, the proposal as drafted would still be subject to challenge under the diminution prohibition. A seven per cent contribution toward retirement would not, in fact, be offset by a seven per cent salary increase. This is because the portion of the judge's salary that goes toward the contribution is included in gross income for purposes of state and federal income tax. Thus, in order to make a seven per cent contribution to retirement, the judge must dip into other salary to pay the tax on the seven per cent contribution, resulting in a diminution. Thus, if the salary increase is to be truly equivalent to the contribution, it must be high enough to take the tax burden into account. Rough calculation would indicate that the salary increase would probably have to be in the neighborhood of ten to eleven per cent.

The most serious constitutional questions raised by imposing a contribution requirement on sitting justices and judges relate to article I, section 10 of the United States Constitution, which prohibits states from impairing contract rights. In Sylvestre v. State, 214 N.W.2d 658 (Minn. 1973), the Minnesota Supreme Court held that the legislature could not reduce existing retirement benefits even for sitting judges who had not yet retired. The basis for the court's holding was that when a judge took office he was promised by the state that he would receive certain retirement benefits in exchange for his services. Once having begun service, the judge had rendered sufficient performance to irrevocably bind the state to its original promise which could not later be altered.

In this situation, the State of Alaska has promised the justices and judges now in office that they will receive certain retirement benefits as provided in AS 22.25 merely by serving in office and without additional cash contribution. Justices and judges now in office have already provided partial performance of what the law requires as a condition of receiving the retirement benefits and that performance is sufficient under Sylvestre rationale to bind the state to that contract. Since there is now an irrevocable contract between the state and the sitting justices and judges with respect to their retirement, the state is constitutionally prohibited from impairing those rights. Contribution to the retirement plan was not part of the original contract, and would constitute a significant alteration or impairment of that contract.

Additionally, we believe that it would not be desirable or fair to require contributions from justices and judges who have already accrued maximum service credit under the existing retirement system. Even with a seven per cent contribution, the judicial retirement system is not going to be actuarially sound. Thus there is no actuarial purpose to be served by requiring contributions from a justice or judge once he or she has accrued full benefits. If anything, it may encourage such justices and judges to leave the bench after only fifteen years and thereby deprive the judiciary and the state of their experience and talent. We would therefore suggest that the Committee consider adding a

provision that would limit the contributions only to the years during which service credit is being accrued. (Under the present benefit formula, this would be fifteen years.)

Finally, the proposed draft does not cure the technical problems that are raised by including magistrates in the judicial retirement system. We have already pointed out these problems to the Committee during oral testimony on House Bill 727 and have provided the Committee with a copy of written comments on the identical Senate bill. Little can be added in this letter to augment our views on this aspect of the proposed draft except to emphasize that the retirement benefits for magistrates would be impossible to calculate under the provisions as currently proposed.

Thank you for allowing us the opportunity to comment on this legislation.

Very truly yours,

Arthur H. Snowden II
Administrative Director

AHS:bh

Paul Arnold

Use full time throughout

Original sponsor: Malone

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 456

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a contributory judicial retirement system; and providing for an effective date."

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

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 27. CONTRIBUTORY JUDICIAL RETIREMENT SYSTEM.

Sec. 22.27.010. APPLICATION. (a) Except as provided in (b) of this section, each justice or judge appointed before July 1, 1978 accrues benefits under the provisions of ch. 25 or ch. 28 of this title. New sentence Each justice ~~of~~ judge or ~~full time~~ magistrate appointed after that date and all ~~full time~~ magistrates accrue benefits under the system provided in this chapter.

(b) A justice or judge appointed before July 1, 1978, who receives an increase or increases in salary after July 1, 1978, equivalent to or greater than seven per cent of his salary as of July 1, 1978, accrues benefits under and is subject to the provisions of this chapter.

Sec. 22.27.020. ADMINISTRATION. The commissioner of administration is responsible for the administration of the system.

Sec. 22.27.030. REGULATIONS. The commissioner may adopt regulations to implement the provisions of this chapter. Regulations adopted by the commissioner under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62).

Sec. 22.27.040. EMPLOYEE CONTRIBUTIONS. While participating in the system each justice, judge, and magistrate shall contribute seven per cent of his compensation to the retirement system.

Sec. 22.27.050. RETIREMENT OF JUSTICES AND JUDGES. (a) A justice, judge, or magistrate shall be retired on the date that he reaches the age of 70. He is eligible for retirement pay if he has had five or more years of service at the time of retirement as a justice, judge, or magistrate.

(b) A justice, judge, or magistrate may be retired for incapacity as provided by law. He is eligible for retirement pay if he has had two or more years of service at the time of retirement for incapacity. The effective date of retirement under this subsection is the first day of the month coinciding with or after the date upon which the governor with respect to a justice, or the supreme court with respect to a judge or magistrate, files with the commissioner of administration a written declaration to the effect that a designated justice, judge, or magistrate was retired for incapacity. A duplicate copy of the declaration shall be filed with the judicial council.

(c) A justice, judge, or magistrate who served for a period of five years, and who believes that he has become so incapacitated as to prevent him from efficiently performing his judicial duties may file with the governor a written application for retirement which contains a sworn statement of his service and of his incapacity. When an application is filed, the governor shall appoint a board of three persons to inquire into the circumstances, and may, upon the board's recommendation, retire the justice, judge, or magistrate. The effective date of the retirement shall be as provided in (b) of this section.

(d) A justice, judge, or magistrate may voluntarily retire at any time and has a vested right to his accrued retirement pay if he has served five or more years. Retirement pay shall not commence until he has reached age 60, except that an actuarially equivalent retirement pay may be commenced after he has reached age 55 or upon his serving 20

years as a justice, judge, or magistrate. The provisions of (b) of this section are an exception to this rule. A justice, judge, or magistrate desiring to retire under this subsection shall file with the commissioner of administration a notice of his desire. If a justice, judge, or magistrate is eligible to receive retirement pay at the time of his retirement, his retirement pay shall ~~commence on~~ accrue from the first day of the month coinciding with or after the date the notice is filed with the commissioner of administration and is payable on the last day of the month. If a justice, judge, or magistrate is not eligible to receive retirement pay at the time of his retirement, his retirement pay shall ~~commence on~~ accrue from the first day of the month he reaches age 60 or the month he becomes eligible for an actuarial equivalent if he has applied for this option and is payable on the last day of the month.

(e) In the computation of service for retirement under this chapter, the time served by a justice, judge, or magistrate of any court of the state is added to the time served by him, if any, on any other court of the state.

Sec. 22.27.060. RETIREMENT PAY. A retired justice, judge, or magistrate eligible for retirement pay shall receive from the date of his eligibility until his death monthly compensation equal to five per cent per year of service, to a maximum of 75 per cent, of the monthly salary authorized for justices, judges, and magistrates, respectively, at the time each retirement payment is made.

Sec. 22.27.070. SURVIVORS' BENEFITS. (a) Upon the death of a justice, judge, or magistrate who has served for at least two years, the surviving spouse is entitled to receive monthly compensation equal to 50 per cent of the monthly retirement pay the justice, judge, or magistrate would thereafter have been entitled to receive if retired at the time of death. If at death the justice, judge, or magistrate was not yet entitled to retirement pay, or was or would have been entitled to less

than 60 per cent of the monthly salary authorized for his office, the surviving spouse is entitled to monthly compensation equal to 30 per cent of the salary authorized for justices, judges, or magistrates, respectively, at the time each monthly payment is made.

(b) To be eligible for the survivors' benefits, the surviving spouse must have been married to the justice, judge, or magistrate for at least two years immediately preceding the death of the justice, judge, or magistrate. The benefits continue until the remarriage or death of the surviving spouse.

(c) If there is no surviving spouse, or if the surviving spouse does not meet the requirements of (b) of this section, or upon the remarriage or death of the surviving spouse, the surviving dependent child or children of the justice, judge, or magistrate are entitled to receive in equal shares 50 per cent of the amount of the survivors' benefits specified under (a) of this section.

(d) The surviving child or children are entitled to the survivors' benefits under (c) of this section during the period of their dependency. Dependency exists with respect to any child of a justice, or judge, or magistrate who is either (1) a minor under the laws of Alaska, (2) under the age of 23 and is a student attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education, or (3) so mentally or physically incapacitated as to be unable to provide for self-care.

(e) If there are both an eligible surviving spouse and surviving dependent children, but who reside in separate households, the surviving spouse and dependent children are entitled to share equally in the benefits payable under (a) of this section.

Sec. 22.27.080. TAX EXEMPTION. Benefits paid under this chapter are exempt from state and municipal taxes.

Sec. 22.27.090. EMPLOYER CONTRIBUTIONS. (a) The employer shall make contributions to the system in accordance with the rate established by the commissioner of administration. That rate shall be based upon the results of an actuarial valuation of the system. The results of the actuarial valuation shall be based upon actuarial methods and assumptions adopted by the commissioner.

(b) The contribution rate shall be a percentage which, when applied to the covered compensation of all active members of the system, will generate sufficient contributions to properly support, in conjunction with employee contributions, the benefits of the system.

Sec. 22.27.100. ACCOUNTING. (a) The contributory judicial retirement account is established to which all appropriations made for the purpose of funding the retirement system under this chapter shall be credited.

(b) An individual account shall be maintained for each justice, judge, or magistrate to which the amount of his mandatory contributions collected under this chapter shall be credited as of the date of deduction or payment, as the case may be. On June 30 and December 31 of each year, beginning with June 30, 1979, this account shall be credited with interest by applying one-half of the prescribed rate of interest to the balance in the account as of that date.

(c) Upon commencement of retirement pay to a justice, judge, or magistrate, the balance in his individual account shall be transferred to the contributory judicial retirement account.

Sec. 22.27.110. REFUNDS. Upon termination of judicial service, application may be made for a refund of the balance in the individual's account. Upon withdrawal of the balance, all rights to benefits terminate.

Sec. 22.27.120. PRIOR SERVICE CREDIT. If a justice, judge, or

magistrate who has withdrawn the balance of his individual account returns to permanent active service, he shall receive credit for his prior period or periods of service only if he repays within one year of the date of return all refunded contributions with interest at the prevailing prescribed rate.

Sec. 22.27.130. MEDICAL BENEFITS. Each person who is entitled to receive a monthly benefit from the retirement system under this chapter shall be provided with major medical insurance coverage. Coverage shall become effective on the same date as retirement benefits commence and cease when the retired employee or survivor is no longer eligible to receive a monthly benefit. The level of coverage for persons over age 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to those afforded under the federal old age survivor and disability insurance program, if any.

Sec. 22.27.900. DEFINITIONS. In this chapter, unless the context clearly indicates otherwise,

(1) "commissioner" means the commissioner of administration;

(2) "judge" means a superior court or district court judge;

(3) "justice" means a supreme court justice;

~~(4) "magistrate" means a district court magistrate;~~

(5) "~~full time~~ magistrate" means a district court magistrate who receives remuneration for his services as a magistrate on the basis of no less than 37.5 hours per week.

* Sec. 2. This Act takes effect July 1, 1978.

HB
484

House Judiciary
May 26, 1977

The meeting was called to order at 9:00 a.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Elaison, Carpenter, Rudd and Brown. All members were present!

HB 484 Medical Malpractice Insurance Coverage HB 484

Dick Block, Director of the Division of Insurance for the Department of Commerce and Economic Development, was here to speak in support of the bill. He explained the bill section by section. The committee had questions of Mr. Block.

Emmett Wilson, representing the Alaska Hospital and Medical Center, from Anchorage also spoke. He indicated that the Legislature had developed MICA to provide malpractice insurance because the insurance companies didn't want to write malpractice. He hoped that the Legislature would approach this issue with concern for the consumer.

Clark King from the Alaska State Medical Association indicated a consensus opinion of 350 doctors that were is support of the bill. Mr. Brown questioned whether this was a consensus opinion.

There were additional questionsof Mr. Block.

The meeting was adjourned at 10:25 when the members received the call to the House.

Sec. 08.64.215 is amended to read:

Sec. 08.64.215. FINANCIAL RESPONSIBILITY. (a) ~~Due~~ to be eligible for an active license under this chapter, a person shall maintain liability insurance in amounts equal to ~~provide coverage for~~ at least $200,000 per claim and $600,000 aggregate claims per year.

(b) A person need not maintain the insurance coverage required in (a) if

(1) the person posts a bond equal to provide the amounts stated in (a);

(2) evidences by proof satisfactory to the Division of Occupational Licensing that the person has sufficient assets to be able to pay an individual judgment of $200,000 and will probably be able to satisfy judgments totaling $600,000 for any individual year; or

(3) from a combination of (1) and (2) above, the person is able to provide an unencumbered source of funds adequate to cover judgments of $200,000 per judgment or total judgments of $600,000 for any ~~individual~~ year.

Sec. 08.64.217. REIMBURSEMENT. (a) A physician who procured a contract providing coverage for medical malpractice from the Medical Indemnity Corporation of Alaska prior to May 1, 1977 shall be entitled to reimbursement in the amount that (1) exceeds (2)

(1) the rate the physician is charged by the Medical Indemnity Corporation of Alaska for the two year period from the effective date of this Act;

(2) the rate that the physician would have been (was) charged for that two year period if the rates and rate plan in effect on May 1, 1977 were in effect during that two year period.

(b) In order to be eligible for reimbursement under (a) of this section, a physician must maintain coverage from the Medical Indemnity Corporation of Alaska for at least two years from the effective date of this Act. delete

See 08.64.219 - The Division shall promulgate regulations necessary to carry out AS 08.64.215 and AS 08.64.215.

Possible exception for pool practice performance by the physician

AMENDMENT TO HB 484

Sec. 18.80.285. DISCRIMINATION IN THE PROVISION OF HEALTH CARE. (a) It is unlawful for a health care provider to deny, discontinue or refuse to afford health care or access to a health care facility to any person on the basis of the person's race, color, national origin, age, sex, marital status or employment or professional status.

(b) It is unlawful for a health care provider to deny, discontinue or refuse to afford to a person health care or access to a health care facility in retaliation for or to deter

(1) exercise by the person of any right guaranteed or conferred by the Constitution or laws of the United States or the state, including but not limited to the right of access to the courts of the United States or any state, whether the person is a litigant, prospective litigant, or person acting on behalf of the litigant or prospective litigant;

(2) exercise by a third person of any right guaranteed under the Constitution or laws of the United States or the state, including but not limited to the right of access to the courts of the United States or the state, whether the third person is a litigant or prospective litigant.

(c) The provisions of (a) of this section do not apply to a practitioner or facility whose practice is limited, based upon a generally accepted category of medical specialization, to persons in a certain age, sex, marital, employment or professional category.

(d) A person who wilfully violates this section is guilty of a felony and, upon conviction, is punishable by a fine of not more than $, or by imprisonment for not less than one nor more than years, or by both.

(e) In this section,

(1) "assistance" means any medical diagnostic, treatment or similar aid for the cure, relief or reduction of disease or bodily injury;

(2) "health care provider" means a physician, chiropractor, dentist or dental hygienist, nurse, dispensing optician, optometrist,

--over--

physical therapist, pharmacist, psychologist, psychological associate or hospital or health care facility.

Sec. 08.64.380(3) is amended by adding a new subparagraph to read:

(G) conviction of an offense involving discrimination in the provision of health care under AS 18.80.285.

Malpractice File

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D -- JUNEAU 99811

April 8, 1977

Dear Physican and Hospital Administrators:

The Medical Indemnity Corporation of Alaska, the medical malpractice insurer established by the 1976 Legislature is now an operating reality and insuring over 150 physicians and 19 hospitals.

Although the desirability of some provisions are being questioned by physicians, the administration continues to believe that total participation by all physicians is necessary if the kind of coverage provided by MICA and the kind of rate structure imposed by statute is to continue.

By the same token, if the physicians indicate that they would accept a different level of insurance and a more restrictive rate plan, total participation by all physicians would no longer be a requirement in the plan.

For the past two months I have met with the Ad Hoc Legislative Committee of the Alaska State Medical Society and with Dr. David Beal at their request to discuss which modifications to the coverage and rating provision would be necessary in order to have a voluntary plan.

As a result of these several meetings the members of the Ad Hoc Committee have agreed that they would accept certain changes in coverage and ratings and I have agreed that if the coverage and rating are changed as stipulated, the plan could operate on a voluntary basis.

I have participated with the Ad Hoc Committee in the draft of legislation which would accomplish this end. The proposed bill, a copy of which is attached, will be introduced on behalf of the ASMA Ad Hoc Committee. Provided no substantial changes are made to the language, the administration will not oppose the bill.

It is important that every person entitled to coverage under MICA review and understand the impact of the proposed changes. I have attached a comparis n page. If you have any questions concerning the proposal, I would be happy to have you call.

Sincerely,

Richard L. Block
Director

RLB/jag5/5

ALASKA MEDICAL MALPRACTICE INSURANCE

COMPARISON

QUESTION	PRESENT LAW	PROPOSED LEGISLATION
Must Physican have Insurance?	Yes - the plan is mandatory.	No -
Must it be procured from MICA?	Yes - it is exclusive.	No - participation in MICA is voluntary.
Must MICA sell the policy to any doctor who applies and pays the premium?	Yes	Yes
Type of coverage?	"Occurrence" - all claims occurring during policy period.	"Claims made" - all claims reported and occurring during period of continuous coverage.
Can tail protection (protection against the late reported claim) be purchased?	Not necessary.	Yes - for an additional premium.
Can the tail protection be procured at any time?	Not applicable.	No - only upon termination of coverage under MICA.
In Calculating Premium: a. Must premium be based upon medical revenue?	Yes	No
b. May medical revenue, or such items as retirement, new practice or bush practice be recognized in the rate?	It is automatically recognized when basing premiums on revenues.	Generally no - although some modest credits might be offered.
c. Will premium for one year be known in that year?	Yes	No - the plan calls for retroactive adjustments for up to three years after the end of the policy period.
d. Will premiums be based on Alaska medical malpractice experience?	To a large degree yes - however, the Alaska experience is not large enough to be fully credible, thus, other factors will have to be included. Overtime, through prospectively applied recognition of Alaska past actual experience, the long-term cost will reflect Alaska experience.	Yes, but because the plan is voluntary, the rates will give less prospective recognition to Alaska experience. Through retrospective rating and because of using a claim made form the recognition of actual MICA experience will be reflected in the insurance cost somewhat more quickly.
e. If insured terminates participation in the plan at the end of a policy period, does the premium obligation also terminate?	Yes - except that there will be a premium adjustment to reconcile actual gross receipts for the last period to estimated gross receipts for the last period.	No - since for three years there is a potential retrospective premium obligation.
Is the plan a permanent solution?	Yes	NO - THE PLAN WILL AUTOMATICALLY ~~It could be, however, if~~ participation falls below ~~the stipulation percentage~~ UNLESS the plan automatically ~~terminates~~ MUST OFFER A PRIVATE INSURER HAS ASSUMED THE BUSINESS
Will statutory provisions for for management of MICA remain the same?	Yes	Yes - except two additional physicians will be included on the Board of MICA.

Prepared by:

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act Amending Medical Malpractice Insurance Law, Chapter 102 Alaska Statutes 1976, to repeal mandatory and exclusive provisions and create a state operated, competitive Medical Malpractice Insurance Fund."

*Section 1. AS 08.64.215 is deleted in its entirety.

*Section 2. AS 08.20.115 is deleted in its entirety.

*Section 3. AS 08.32.015 is deleted in its entirety.

*Section 4. AS 08.36.115 is deleted in its entirety.

*Section 5. AS 08.68.165 is deleted in its entirety.

*Section 6. AS 08.71.085 is deleted in its entirety.

*Section 7. AS 08.72.115 is deleted in its entirety.

*Section 8. AS 08.80.115 is deleted in its entirety.

*Section 9. AS 08.86.125 is deleted in its entirety.

*Section 10. AS 09.55.544 is amended by adding a new section to read:

Sec. 09.55.544. LIMITATION OF ACTION. (a) Except as provided in (b) of this section, no person may bring a malpractice action based on the negligence or wilful misconduct of a health care provider unless commenced within two years of the act or omission. However, if the plaintiff first has knowledge of the act complained of on a date within one year of the expiration of the period of limitation, the time limited for commencement of the action is extended one year from that date, but in no event may an action be commenced later than three years from the date of the act complained of.

(b) If the act complained of occurred before the plaintiff attains the age of six years, a malpractice action based on negligence or the wilful misconduct of a health care provider may be commenced at any time before the plaintiff attains the age of eight years, but no later.

*Section 11. AS 18.20.045 is deleted in its entirety.

*Section 12. AS 21.88.050(a)(1) is amended to read:

(1) in the form approved by the director, issue to all physicians and hospitals who pay the premiums for it a contract or contracts indemnifying physicians and hospitals and their employees who are health care providers against loss by reason of liability for [PROFESSIONAL SERVICES RENDERED IN THE STATE ON AN OCCURRENCE BASIS] <u>covered claims for an act or omission in the delivery of professional health care in this state</u>, and agreeing to

tender on behalf of the physicians and hospitals and their employees who are health care providers a defense in a covered claim brought under AS 09.55.530 - 09.55.560; [THE LIMITS OF LIABILITY SHALL BE NO LESS THAN THE MINIMUM LIABILITY COVERAGE REQUIREMENTS TO BE MAINTAINED UNDER AS 08.64.215 AND AS 18.20.045] the limit of liability provided in contracts issued to doctors shall be $200,000. per occurrence and $600,000. aggregate liability per year; the limit of liability provided in contracts issued to hospitals shall be $200,000. per occurrence, and an aggregate liability per year of $1,000,000. minimum, and an additional $20,000. for each bed over 50; the contract shall cover the defense against but need not indemnify a covered claim for punitive damages; at the option of the physician or hospital and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital for a period after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the physician or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

*Section 13. AS 21.88.050(a)(2) is deleted in its entirety.

*Section 14. AS 21.88.050(a)(7) is deleted in its entirety.

*Section 15. AS 21.88.050(b)(10) is added:

(10) in a form approved by the director and for an additional premium determined under sec. 80 of this chapter, issue endorsements which provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year.

*Section 16. AS 21.88.080(4) is amended to read:

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported [PROVIDED THAT RESERVES FOR CLAIMS INCURRED DURING THE POLICY PERIOD AND REASONABLY EXPECTED TO BE REPORTED AFTER THREE YEARS AFTER THE INCIDENT MAY BE INCLUDED ON A DIFFERENT BASIS DUE TO THE ADDITIONAL FINANCIAL FLEXIBILITY PROVIDED BY THE CORPORATION] and reasonable expenses for the operation of the corporation.

*Section 17. AS 21.88.080(5) is amended to read:

(5) rates shall not be inadequate; rates are inadequate if, based on available data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not

reported, [PROVIDED THAT RESERVES FOR CLAIMS INCURRED DURING THE POLICY PERIOD AND REASONABLY EXPECTED TO BE REPORTED AFTER THREE YEARS AFTER THE INCIDENT MAY BE INCLUDED ON A DIFFERENT BASIS DUE TO THE ADDITIONAL FINANCIAL FLEXIBILITY PROVIDED BY THE CORPORATION,] and reasonable expenses for the operation of the corporation;

*Section 18. AS 21.88.095 is added:

a) The corporation shall transfer all of its assets and liabilities to the company that meets all of the following qualifications:

1) Possesses a valid certificate of authority to transact casualty business in the State of Alaska. In evaluating the capital and surplus of the company for qualification for a certificate of authority the value of the assets and liabilities of the corporation shall not be considered.

2) Pays to the corporation the full value of any surplus in the corporation not represented by any unrepaid proceeds of loans by the loan fund to the corporation.

3) Executes a complete reinsurance and hold harmless agreement in form approved by the director covering all the corporation's obligations to its creditors and policyholders.

4) Executes modifications of loan agreements with the loan fund in which

i) the company agrees to assume the obligations.

ii) The loan provision shall be modified to provide a scheduled amortized repayment of the principal over a period not to exceed ten years if at any time the company writes less than premium levels provided in AS 21.88.050(a)(8).

iii) The provision for repayment provided in AS 21.88.210(b)(1) shall be modified to provide for annual installments of at least 25% of the excess of premium and investment income collected over the total of claims, reserves, and expenses on the medical malpractice book of business or 25% of the excess of premiums and investment income collected over the total of claims, reserves, and expenses on the corporation's total book of business, whichever is greater.

b) The company buying the business as provided in a) above shall enjoy the benefit of special provisions in c) below if the following provisions are met:

1) The company is an Alaskan domestic stock company.

2) The company continues to write premiums in excess of the levels provided in 21.88.050(a)(8).

c) The company meeting the qualifications in b) above shall

1) be entitled to carry forward and offset against its premium tax obligation the amount by which aggregate claims paid on reinsurance assumed pursuant to a)(3) of this section exceeds aggregate reserves on the same business.

2) the obligation to repay to the loan fund loans assumed at the time of transfer of the business shall not be shown as a liability on the books of the company.

*Section 19. AS 21.88.110 is deleted in its entirety.

*Section 20. AS 21.88.120 is deleted in its entirety.

*Section 21. AS 21.88.130 is deleted in its entirety.

*Section 22. AS 21.88.150 is deleted in its entirety.

*Section 23. AS 21.88.160 is deleted in its entirety.

*Section 24. AS 21.88.170 is deleted in its entirety.

*Section 25. AS 21.88.180 is deleted in its entirety.

*Section 26. AS 21.88.900(1) is deleted in its entirety.

*Section 27. AS 21.18.090(5) & (6) are deleted in their entirety.

*Section 28. AS 21.88.050(a)(8) is added:

(8) cease operation and terminate its affairs, if for two consecutive annual periods the corporation posts written premium in amounts less than 50 percent or if for one annual period posts written premium in an amount less than 35 percent, of the total written premium of all medical malpractice insurance for risks of physicians and hospitals in Alaska; but in any event the corporation shall cease operation and terminate its affairs by June 30, 1979.

*Section 29. AS 21.88.080(15) is added:

(15) if the corporation's collected premiums for any given year are less than its incurred claims, claim expense, underwriting expense, reserves for that year, and provision for repayment of any loans, it shall levy an assessment upon those insureds who held policies during that year; the assessment, which may be made in periodic installments, must be made within three years and may not exceed 150 percent of the physician's premium for that year. Termination of any policy does not relieve the insured of contingent liability for his proportionate share of the obligations to the corporation which accrued while the policy was in force.

*Section 30. AS 21.88.080(16) is added:

(16) if the corporation's collected premiums for any given year exceed its incurred claim expense, underwriting expense, reserves for that year, and provision for repayment of any loan, it may apportion and pay or credit its insureds, who held policies during that year, only out of the part of its surplus fund which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained; such payment or credit shall be proportionate to the insured's earned premium for that year.

*Section 31. As 21.88.900(16) is added:

(16) "covered claims" means claims by injured patients reported to the corporation during the period of continuous coverage by the corporation of the insured health care provider for an act or omission in the delivery of health care services during the same period of continuous coverage; continuous coverage is one or more successive policy periods which is uninterrupted by cancellation or failure to renew for any reason.

ANCHORAGE PEDIATRIC GROUP
3300 PROVIDENCE DRIVE - SUITE 206
ANCHORAGE, ALASKA 99504
PHONE 279-6461 AREA CODE 907

February 22, 1977

JOHN C. TOWER, M.D.
HARVEY F. ZARTMAN, M.D.
MARIAN WITT, M.D.
R.W. KELLER, M.D., APC.

PLEASE REPLY BY AIR MAIL

Representative Lisa Rudd
2827 Lore Road
Anchorage, Alaska 99507

Dear Mrs. Rudd:

I don't believe you actually are representative from our district (Indian Hills) but I feel that I can write to you as a friend, as well as a representative of the Anchorage area in Juneau, regarding my plight in the present malpractice situation. I am sure that all the legislators are fed up with various bickerings back and forth and especially with some of the less than refined language of certain of our spokesmen (in this particular instance one can take a certain pride in the fact that the women in the medical association have somewhat better control of their tongues). Until November of last year I and John Tower and Marian Witt had for a very reasonable price, all things considered, excellent malpractice coverage through Clyde Clary's association with an umbrella of a one million dollar coverage. For this our group paid, up until last year, approximately $1,600 a year, and last year $4,600. However, as of November 1, the company or companies through which Clyde obtained our insurance all stopped insuring doctors in Alaska and we have been "bare" ever since. Then along comes MICA with its mandatory provision which will decimate my finances and I can't speak with complete knowledge of my colleagues, and this for a coverage of only $200,000. We will each be expected to pay a basic $1,000 which comes to $4,000 for the group, and then will each be expected to pay another $2,600 which comes to another $10,400, bringing the grand total of our premiums for the first year for the Anchorage Pediatric Group to a rousing $14,400. And, as you know from the law, this is not the end since it is an open-ended agreement in which if there are enough adverse judgments the entire membership will be assessed for anything over and above this. The coverage that we will get is a mere $200,000.

With these alternatives I have no choice but to elect to go bare and as things stand now this would be breaking the law. I have lived in Alaska for 20 years so far, my children have all been raised here, our home is here, and we have no desire to live anywhere else. At my age it is very difficult to break away from a practice and re-establish in another area of the country and I feel it is rather unfair to be placed in that position by this kind of a law. Malpractice insurance was formerly thought to be insurance for the physician to protect him and his assets against a possibly adverse suit. Since we have essentially no assets other than our good health and good name (I hope) we can go "bare." I have no plans

to do malpractice and do not feel that I have done malpractice in the past though it took a harrowing five years and a vicious five weeks in court one time to demonstrate that fact to some attorneys who shall remain nameless. I cannot promise my patients that there will not be bad results from medical treatments and I have been more cautious since November to stay out of so-called dangerous situations now that there are other pediatricians in Anchorage. As you may have heard through the grapevine, the case in which I was sued for some three million dollars involved a patient with no previous medical contacts in the community who literally presented an emergency situation which we could not with any honesty decline to cover. But now with so many pediatricians, I feel that the others can cover the anonymous prematures and other risky pediatric emergencies, at least for the time being.

The mandatory nature of this malpractice coverage bothers me from another standpoint. If nothing else was settled in my trial, the Supreme Court did hand down a dictum which has been published in national medical periodicals (the A.M.A. Newspaper) that the presence or absence of malpractice insurance in the portfolio of the physician defendant is not a proper consideration by the jury or the courts at the time of a malpractice suit. And Judge Buckalew was upheld in his refusal to allow the plaintiff's attorneys to inform the juries of the amount of our malpractice coverage since it had nothing to do with the rightness or wrongness of the care I rendered to the baby. If the malpractice law is allowed to stand as is with the mandatory provision, then every juror, every bailiff, every judge, every attorney, every plaintiff in the entire state will know that every doctor is good for a $200,000 judgment once every year. This bit of evidence will unavoidably tarnish every civil suit and it has already been declared improper that the jury have this information. I doubt that Mr. Block has even considered this in making all of his claims for the necessity of this mandatory provision.

I must confess I am not actually sure what committees you serve on and what direct interests you may have in the changes in this malpractice law. However, I would urge, if it is at all possible, to at least let my feelings as a single practicing physician be known among all of the loud noises and confusion over the legislation. At the present time, 2-17-77, I have not paid the MICA insurance, I have not sent back Judge Ripley's court order, I have not taken part in any of the suits, and I am at a loss and quite disturbed about the future of myself and my family. I do not knowingly wish to go out and break the law but the alternative, unfortunately, for me would be bankruptcy. Any help that you could give in this matter would be greatly appreciated.

Sincerely yours,

Harvey F. Zartman, M. D.

HFZ:EM

John Thanks for your contribution.

Alaska State Legislature

Representative
CLARK GRUENING
940 Tyonek Drive
Anchorage, Alaska
99501

907-274-2446

Chairman
SPECIAL COMMITTEE ON
THE ALASKA PERMANENT FUND
Chairman
WAYS and MEANS SUBCOMMITTEE
Member
FINANCE COMMITTEE
LEGISLATIVE COUNCIL

House of Representatives

POUCH V JUNEAU 99811

April 28, 1977

Paul M. Worrell, M.D.
207 E. Northern Lights Boulevard
Anchorage, Alaska 99503

Dear Dr. Worrell:

Thank you for your letter expressing your views on the malpractice situation.

As you point out, malpractice insurance is not just an Alaskan problem, but a national one, and our sister states still seek a solution as well. The only provision in your postcript addressed by HB 484 is the statute of limitations.

We are looking closely into the entire problem and trying to reach an equitable solution. An equitable solution would in my view still contain provisions for compensation for patients injured by malpractice.

Enclosed for your information is a Ketchikan Medical Society's position paper on malpractice. I agree with their view that tort reform ought to apply to all professional liability, including limitation of personal liability.

Cordially,

Rep. Clark Gruening

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

April 26, 1977

Fairbanks Legislators
Pouch V
Juneau, Alaska 99811

ATT: Larry Carpenter, Don Bennett, Sally Smith, Fred Brown, Charlie Parr, John Butrovich, Glenn Hackney, Steve Cowper, John Huber

SUBJECT: Malpractice Legislation

Dear Legislators:

I feel it is timely and necessary that I make our Fairbanks Legislators aware of many of the physician's, in the Fairbanks area, disagreement with the recommendations of our recent leaders in the Alaska State Medical Society. We also vehemently disagree with the tactics in which they have employed to bring the issue to the attention of the legislators.

It is my opinion, after considerable involvement with the Malpractice Commission, that the mandatory provision in the law should not be discarded lightly and would urge you not to allow this to happen during this legislative session. If the mandatory requirement for malpractice insurance through the M.I.C.A. is eliminated, it would be my prediction that within a year or two we will be back to the same situation that we were two years ago, namely nonavailability of any insurance at what any of us could call reasonable cost. It would be my suggestion that the M.I.C.A. remain a mandatory requirement on the part of all practicing physicians in the state of Alaska, at least for one and probably two years until enough experience has been gained to make an intelligent nonemotional decision regarding its necessity.

There are several other changes that are being recommended, such as increased physician representation on the board, a more restrictive statute of limitations, none of which we obviously have any objection to. There are many other changes in the law that I see being required before we truly have a workable situation, but feel it is inappropriate at this time to urge these changes until a period of experience has been obtained. I would be happy to answer any questions regarding this subject and could even travel to Juneau should any of you feel it advisable.

Sincerely,

W. F. Kinn, M.D.

cc: Richard L. Block, Director of Insurance

1919 LATHROP STREET, P.O. 1248, FAIRBANKS, ALASKA 99707, PHONE 456-7767

WFK/dls

April 25, 1977

Mr. Richard L. Block
Director Division of Insurance
Department of Commerce &
Economic Development
Pouch D
Juneau, Alaska 99811

Dear Mr. Block:

We have reviewed your letter of April 8th and the proposed revisions of the malpractice law and wish to record our impressions.

The proposed revisions appear to abolish a malpractice insurance program which offers good insurance at reasonable cost and substitute an inadequate claims made program which will almost certainly fail to provide any satisfactory insurance. Because of this we strongly oppose the proposed revisions.

Prior to the passage of the Medical Malpractice Insurance Law and formation of MICA there was a malpractice insurance problem with many physicians unable to obtain insurance at any price and for many more inadequate claims made insurance available only at exorbitant cost. We prefer to have adequate insurance to protect ourselves and our patients and it is disturbing to see a potentially good and workable program for provision of insurance scuttled.

The reasons for and methods of arriving at the proposed changes in the law are also of concern. While the mandatory provision may cause an initially negative response, the possibility of any satisfactory program without total participation of all providers seems nonexistent. While costs for some groups may be greater now under the program, if the general trend persists rates will almost certainly be comparable in a short time. As for the methods of arriving at the recommended changes, we certainly do not feel that the ad hoc committee of the Alaska State Medical Association has represented us and doubt that it has represented the opinion of the majority of practicing physicians in the state. Rather, we feel it represents the feelings and recommendations of some members of the Anchorage medical community and we would question whether these views are consistent with the best interests of medical care statewide.

While the Medical Malpractice Insurance Law may not stand proposed court test, we feel it should have that chnace and accordingly should not be revised at this time.

Sincerely,

J. Paul Lunas, M.D.

Edward D. Spencer, M.D.

Donald D. Funk, M.D.

Paul D. White, M.D.

George H. Longenbaugh, M.D.

M. Theodore Silver, M.D.

cc: Governor Jay Hammond
Honorable Richard Eliason
Honorable Pete Meland
Arthur N. Wilson, M.D.
William F. Kinn, M.D.
Harriet Schirmer, M.D.

Fairbanks Family and General Practice
A Professional Corporation
Dr. Cammack Dr. Roth
Medical Dental Arts Building
1919 Lathrop, Suite 207
Fairbanks, Alaska 99701

May 2, 1977

Fairbanks Legislators
Pouch V
Juneau, Alaska 99811

ATTN:	Larry Carpenter	Fred Brown	Glenn Hackney
	Don Bennett	Charlie Parr	Steve Cowper
	Sally Smith	John Butrovich	John Huber

Dear Legislators:

Although we physicians in Fairbanks have not been as vocal as our counterparts in Anchorage and we may disagree with their tactics, the question of malpractice insurance is a concern of ours also. The issue does not appear to be any clearer here in Fairbanks however, with some physicians wanting mandatory insurance and others against it. We, at Fairbanks Family and General Practice, are against M.I.C.A. for the following reasons:

1. It is mandatory.
2. It is rediculously expensive.
3. It really doesn't address the problems of defining malpractice, setting amounts of awards, defining damages, and setting time limits.

At the present time, we do not have insurance coverage and haven't had coverage for almost 3 years. We feel that with the current situation, insurance coverage only invites lawsuits. Also, the expense could necessitate raising fees to patients 10% at least.

I don't have any easy solutions to this problem, but at the present, the placard "PROTECTED BY THE MAFIA" seems like an attractive alternative.

Sincerely,

David M. Cammack, M.D.

KETCHIKAN MEDICAL SOCIETY

3100 TONGASS AVENUE - KETCHIKAN, ALASKA 99901

POSITION PAPER ON MALPRACTICE
December 28, 1976

Few issues recently confronting medicine and the public interest have provoked more discussion, sentiment, legislative action and judicial review than the medical malpractice situation. We want to outline our position on several aspects of the medical malpractice situation in Alaska. First, we wish to present our evaluation of Alaska's current malpractice law. Second, we want to discuss implementation of the insurance provisions by the Medical Indemnity Corporation of Alaska (MICA). Finally, we wish to recommend legislation bringing tort reform.

I. EVALUATION OF ALASKA'S CURRENT MALPRACTICE LAW.

An enormous amount of work by physicians, attorneys, laypeople, state officials and particularly legislators culminated last May 28. On that date Governor Hammond signed Chapter 102 of Alaska Statutes 1976, commonly referred to as Alaska's Medical Malpractice Insurance Law. Nothing in our evaluation is intended to overlook or belittle this significant accomplishment.

A. Several strong points in Chapter 102.

We believe that Chapter 102 made several important changes. The advisory panels will bring relevant medical facts to the courts promptly. Definition of the necessary burden of proof in court and of the concept of informed consent in clinical settings will protect the orderly practice of medicine. Spelling out the place of advance payments, elimination of ad damnum clauses, inclusion of payment for damages by category of loss and consideration of collateral resources in judgements will restrict financial liability while protecting the plaintiff.

We welcome the expansion in Chapter 102 of the responsibilities of, and options available to, the State Medical Board. Addition of two consumer members to the board may well be of value, given that the majority remain physicians. We recognize that policing our profession is difficult, but believe that physicians are best qualified to oversee their ranks.

information JLS.

B. Chapter 102 does not include tort reform.

Any sort of insurance without meaningful tort reform promises to be an expensive venture, virtually certain to founder financially. While Chapter 102 does modify previous law in several significant particulars, it does not attack this major problem.

C. Chapter 102 creates MICA'S mandatory insurance.

Reaction to the mandatory aspects of MICA insurance by the medical profession throughout the state has been largely negative. We share philosophical reservations regarding mandatory participation in a state sponsored system of insurance. We do not share philosophical objection regarding required insurance for the protection of both our patients and our profession. Even though state sponsored insurance programs are new, the legal system has always recognized the responsibility of physicians for their patients. The fact that medical liability law has been seriously mishandled in contemporary society does nothing, in our view, to upset the tenability of requiring responsibility for professional actions.

D. We support MICA.

Question remains whether MICA is the single [illegible]opriate source of insurance. We reluctantly support MICA, se[illegible] o workable alternative at this time. In view of the re[illegible]ly small number of physicians statewide, this spreads the risk a[illegible] as possible. Further, it makes the composition of the group [illegible]nsistently predictable to the greatest possible degree.

Mandatory insurance with a single source avoids problems of adverse selection present in an open insurance program, and assures that insurance is available for everyone. A single source of insurance equalizes premium rates to the greatest possible degree.

Single source insurance permits the most complete data collection. It encourages the most vigorous possible defense against suits, since all physicians in practice in the state are involved in any legal action directly or indirectly.

Mandatory MICA insurance makes the medical malpractice insurance issue completely public. It renders information readily available to the legislature, which has responsibility to make necessary changes in the legal system.

E. Alternatives to MICA.

Possible alternatives to mandatory MICA insurance apparent to us include either permitting personal posting of resources in escrow

to the limits set by the legislature, or MICA signing a contract with some separate entity which would guarantee participation by a contracted minimum number of physicians and provide coverage to any physician needing it. We are concerned that the unavailability of reinsurance to MICA at a reasonable cost confirms that a viable voluntary, widely available insurance program in Alaska is most unlikely at this time. There appears to be no other alternative to MICA that would guarantee availability of insurance for all physicians, and protection for all patients.

II. IMPLEMENTATION OF THE INSURANCE PROVISIONS BY THE MICA BOARD.

A. Positive accomplishments by the MICA board.

We believe that the MICA board has worked hard and conscientiously. Two of the issues inciting most violent reaction, namely mandatory MICA insurance and consideration of medical revenues in setting premiums, were included in Chapter 102. To their individual credit, board members have dealt with unrestrained and at times unjustified criticism with equanimity. They have accomplished a great deal in a relatively short time.

At the point of proposed premium fees, we find the documentation of the actuarial process complex but defensible. We question the wisdom of including California, an exceedingly high risk state, in the calculations for Alaska, thought by most to be a low risk state. While we are admittedly in a position where self interest is served by a differentiation in premium rates between urban and rural communities, we find the fifteen percent differential granted well supported by actuarial data at a significantly higher level. The system of classification by specialty is complex, but seems to approximate others with which we are more familiar.

While we believe that MICA has been unnecessarily rigid in the primary basis of premiums in medical revenues, the concept of basis in revenues is not offensive. In fact, it provides safeguards for physicians beginning their practice, closing their practice, or in a low volume practice. The combination of a maximum fee by classification with an alternative rate for each classification based in revenues appears the most flexible and realistic option. Problems peculiar to specific practices with exceptionally high overhead expenses may well require broadening the discretionary powers of the board to individualize rates further.

B. Criticisms and suggestions for changes for the MICA board.

Unfortunately, the MICA board has distinguished itself with arbitrary action that has irritated many of us. The tone of many of their belated releases of information remains imperial. We

welcome dialogue between physicians and the MICA board, and urge opening of all MICA board meetings to any MICA-insured professional, except when particular case discussions require confidential proceedings.

We believe that the arbitrary time limitation for applications for retrospective coverage served no useful purpose, and should have been significantly more lenient.

We do not believe that the $200,000 per occurance limitation of liability claimed by MICA to include all physicians in a group satisfies the requirement of the law for $200,000 coverage per occurance for each physician. MICA's position seems particularly unreasonable, since each physician pays a separate premium for separate coverage.

With mandatory insurance available to well publicized limits, we believe that MICA must rigorously defend all claims where any questions of liability exists. MICA must function as a mutual defense organization, since its clientele is completely captive and its availability transparently public.

We remain extremely uncomfortable with the claimed prerogative of MICA to limit its liability below statutory limits in seeking settlement against the involved physician's wishes rather than pursuing defense. While we understand the rationale, we prefer that a clearly defined series of peer reviews take place prior to this step. Such a series might include a unanimous opinion against the physician by the expert advisory panel and similar opinion by another, uninvolved physician prior to MICA action. We believe that a MICA decision to settle against the involved physician's wishes should require unanimous board action.

We persist in protesting the obvious presumption of guilt in penalizing physicians for suits filed with increased premiums. The doublespeak of titling the penalty system a "merit rating plan" is ludicious. It should more properly be labeled a "claim penalty plan".

III. RECOMMENDED LEGISLATIVE TORT REFORM.

We believe that the key to solving the malpractice problem includes significant tort reform, and this requires further legislative action. This tort reform should apply in the broadest sense to all professional liability, rather than simply to medical malpractice. We believe that three specific reforms are necessary.

First, there must be some limitation of personal liability. With mandated insurance and thus mandated vulnerability for the professional, no feasible premium structure can cope with exponentially increasing settlements and awards.

Second, elimination of judgements for pain and suffering is similarly essential. Quantification of such loss in clearly impossible.

Third, there must be a rational statute of limitations. We firmly believe that two years from time of incident or age six years, which ever is later, would be the best alternative. Such a statute of limitations would protect the injured party, bring legal action while information and facts were more likely available and render rate setting for insurance considerably easier.

We are opposed to statutory limitations of legal fees, and consider it improper to intrude into a private matter between professional and client. Public notification of the settlement or verdict in any suit should include mention of court awarded attorney's fees. We urge continued evaluation and surveillance of the alleged benefits of the contingency fee system.

IV. SUMMARY.

In summary, we believe Alaska's Medical Malpractice Insurance law made several significant changes. We reluctantly support the current MICA program. We believe that for this or any other insurance program to remain viable tort reform is necessary. We believe a limitation of personal financial liability, elimination of awards for pain and suffering, and a statute of limitations of two years after incident or age six years, which ever comes last, are all urgently needed.

Pat copies in Members Mail Boxes

Charles P. Flynn
918 "R" Street
Anchorage, Alaska 99501

March 31, 1977

Honorable Lisa Rudd
House of Representatives
Juneau, Alaska 99811

Dear Lisa:

I would like to bend your ear for a few minutes on the subject of medical malpractice legislation, and some of the proposals that are currently being made. First, I should say that I have resigned from the Board of Governors of the Medical Indemnity Corporation of Alaska, for a variety of reasons, and the opinions expressed are purely my own. Second, a similar caveat, my understanding of the present proposals being made by the Medical Association is gleaned solely from newspaper accounts, and is therefore subject to whatever reporting error may be in those stories.

I think the point that most concerns me about the proposals which are now being made is that they involve what is apparently a hidden subsidy to the medical profession by the taxpayers of this state. You may recall that when the Governor appointed his task force on medical malpractice insurance, one of the most hotly debated issues before the task force was the question of whether or not the state should subsidize the doctors medical malpractice insurance premiums. The task force concluded that it should not, and I am confident that that was the correct decision. I think it is clear, however, that if the state sets up a malpractice insurance company which is not run on an economically sound basis, that there will be an indirect subsidy to the doctors, to the extent that their premiums are not truly reflective of the cost of providing the insurance. Setting medical malpractice insurance premiums is an extremely difficult job, as I can certainly attest from my experience with the Medical Indemnity Corporation of Alaska. There is a wide range of possibilities, and substantial judgment which must be exercised in determining what are the true comparables in establishing an appropriate cost for the insurance. In

addition, it is the nature of insurance, and particularly medical malpractice insurance, that the accuracy of your predictions will not be known for many years after the fact. Thus, if the state chartered corporation were to set its premiums significantly below the true cost of the insurance, I have been led to believe that it would be a minimum of five years before that fact would become apparent. Needless to say, this problem is a continuous one, in that you never really catch up with your experience. Thus, merely requiring that the corporation be managed on an actuarily sound basis does not necessarily assure that the state will not be subsidizing the doctors premiums, especially when you consider the extremely strong lobbying pressure that is applied to the members of the board by the medical profession. For example, the board originally adopted a plan of operation which called for closed meetings. The theory behind this was that it allowed a full and free and candid exchange of views between the members of the board as to the problems they faced. After receiving substantial criticism from the medical professional, and Governor Hammond, the board amended the plan of operation to provide that any member of the medical profession could attend meetings of the board, but that the meetings were to remain closed as to members of the general public. Although it is true that any person may request to be heard by the board, and I am sure such requests will be granted freely, the practical effect of such a distinction will be to create a extremely strong, and one-sided, lobbying force which is being applied to the Board of Governors. This would have the natural effect of minimizing the premium, and therefore maximizing the possibility of a state subsidy.

In addition, if the plan is not mandatory, any true correction of the premium level, if it is determined to be too low, will be extremely difficult. This is because if the corporation raises its rates to an economically sound level, or raises them even further to a level which will equalize for the prior undercharges, it will have a tendency to drive doctors out of the state corporation, and into the private market, which will be able to undersell the state, because it will be able to exercise underwriting judgment as to which doctors to accept as insureds. Thus, adverse selection will compound the problem of determining rates. Presumably one of the features of the state plan is that the state corporation will be required to accept any doctor as an insured. If that assumption is not correct, it seems to me

a legitimate question as to why the state is getting in the business of chartering a company which will perform just like any other insurance company, and may decline to write insurance for either specific doctors or specific groups or categories of doctors.

I have heard Dave Bickerstaff, an actuary who advises the M.I.C.A., testify at length that it would be very difficult, and perhaps impossible, to calculate a sound rate in the Alaska situation, if there were no mandatory and exclusive requirement. Thus, if the state sets up an insurance company as a last resort, I assume there is a very high chance that it will underprice the insurance. This would, in turn, mean that the taxpayers were picking up the difference, by putting up the capital which would be used to pay losses in excess of premiums.

All in all, it seems to me that the primary problem to be avoided is having the taxpayers subsidize premiums of the doctors. I think, in general, the medical community agrees with this proposition, and feels that if insurance premiums must be paid, that the doctors should pay their own way. While they properly point out that the system may be getting away from us in terms of the economic cost of maintaining our existing tort system, they are certainly not alone in suffering the consequences of that problem. Other professional groups, such as lawyers, are just beginning to feel the price escalation in malpractice insurance, and other groups, such as architects and engineers, have been under severe pressure even longer than the doctors. If it is appropriate to create an insurance company which will assure the doctors coverage, it seems to me at least equally appropriate to widen the jurisdiction of that company to include other professional groups such as lawyers, architects and engineers. The same analysis might well be used for problems such as automobile and homeowners insurance in the state, which I understand is becoming increasingly difficult to obtain, and increasingly expensive for more limited coverage. Thus, the point is not, to some extent, whether the doctors are entitled to this kind of treatment, but whether they are the only ones who are entitled to this kind of treatment.

Although the present statute certainly has defects, I do think it is significantly more fair to the taxpayers of the state than is the apparent proposal being made at the present time. I do think, however, that the present statute cannot realistically be expected to work, and accomplish its purposes, without the cooperation, or at least the acquiescence, of the medical community. Since that acquiescence is apparently not going to be forthcoming, I agree that it is appropriate to look for a realistic alternative. It seems to me that the alternative is not to place the state in an even more vulnerable position with respect to the cost of insurance, but to use the state's financial resources to make it possible for the doctors to solve their own problems. I would suggest that this might be accomplished by having the state loan to a mutual insurance company, which could be chartered by the medical community, a sufficient sum to capitalize the mutual insurance company. This loan would then be paid back over some reasonably short period of time, such as five or ten years, and during the same period of time the members of the mutual company would be required to make capital contributions sufficient to capitalize the company. These "bed pan mutuals" have had some success in other areas of the country, and it would seem to me to put the insurance problem back in its proper prospective. It gets the state out of the business, it allows the doctors full control over their own destiny, and it makes insurance available on the terms that the doctors themselves view as appropriate. While I have certainly not thought through this proposal in any great detail, it seems to me that it could be worked out in such a fashion that it would reasonably assure the return of the state's investment, and at the same time make it possible for the medical community to form an insurance company which would meet their needs, and in a way that there is not an immediate imposition of a large demand for a capital contribution.

I am sorry I have burdened you with this somewhat overlong letter, but it seemed to me that I should try to make some use of the accumulated information, if not wisdom, I have collected in the course of working with this problem.

Very truly yours,

Charles P. Flynn

CPF/lf

ANCHORAGE PEDIATRIC GROUP
3300 PROVIDENCE DRIVE - SUITE 206
ANCHORAGE, ALASKA 99504
PHONE 279-6461 AREA CODE 907

February 22, 1977

JOHN C. TOWER, M.D.
HARVEY F. ZARTMAN, M.D.
MARIAN WITT, M.D.
R.W. KELLER, M.D., APC.

PLEASE REPLY BY AIR MAIL

Representative Lisa Rudd
2827 Lore Road
Anchorage, Alaska 99507

Dear Mrs. Rudd:

I don't believe you actually are representative from our district (Indian Hills) but I feel that I can write to you as a friend, as well as a representative of the Anchorage area in Juneau, regarding my plight in the present malpractice situation. I am sure that all the legislators are fed up with various bickerings back and forth and especially with some of the less than refined language of certain of our spokesmen (in this particular instance one can take a certain pride in the fact that the women in the medical association have somewhat better control of their tongues). Until November of last year I and John Tower and Marian Witt had for a very reasonable price, all things considered, excellent malpractice coverage through Clyde Clary's association with an umbrella of a one million dollar coverage. For this our group paid, up until last year, approximately $1,600 a year, and last year $4,600. However, as of November 1, the company or companies through which Clyde obtained our insurance all stopped insuring doctors in Alaska and we have been "bare" ever since. Then along comes MICA with its mandatory provision which will decimate my finances and I can't speak with complete knowledge of my colleagues, and this for a coverage of only $200,000. We will each be expected to pay a basic $1,000 which comes to $4,000 for the group, and then will each be expected to pay another $2,600 which comes to another $10,400, bringing the grand total of our premiums for the first year for the Anchorage Pediatric Group to a rousing $14,400. And, as you know from the law, this is not the end since it is an open-ended agreement in which if there are enough adverse judgments the entire membership will be assessed for anything over and above this. The coverage that we will get is a mere $200,000.

With these alternatives I have no choice but to elect to go bare and as things stand now this would be breaking the law. I have lived in Alaska for 20 years so far, my children have all been raised here, our home is here, and we have no desire to live anywhere else. At my age it is very difficult to break away from a practice and re-establish in another area of the country and I feel it is rather unfair to be placed in that position by this kind of a law. Malpractice insurance was formerly thought to be insurance for the physician to protect him and his assets against a possibly adverse suit. Since we have essentially no assets other than our good health and good name (I hope) we can go "bare." I have no plans

to do malpractice and do not feel that I have done malpractice in the past though it took a harrowing five years and a vicious five weeks in court one time to demonstrate that fact to some attorneys who shall remain nameless. I cannot promise my patients that there will not be bad results from medical treatments and I have been more cautious since November to stay out of so-called dangerous situations now that there are other pediatricians in Anchorage. As you may have heard through the grapevine, the case in which I was sued for some three million dollars involved a patient with no previous medical contacts in the community who literally presented an emergency situation which we could not with any honesty decline to cover. But now with so many pediatricians, I feel that the others can cover the anonymous prematures and other risky pediatric emergencies, at least for the time being.

The mandatory nature of this malpractice coverage bothers me from another standpoint. If nothing else was settled in my trial, the Supreme Court did hand down a dictum which has been published in national medical periodicals (the A.M.A. Newspaper) that the presence or absence of malpractice insurance in the portfolio of the physician defendant is not a proper consideration by the jury or the courts at the time of a malpractice suit. And Judge Buckalew was upheld in his refusal to allow the plaintiff's attorneys to inform the juries of the amount of our malpractice coverage since it had nothing to do with the rightness or wrongness of the care I rendered to the baby. If the malpractice law is allowed to stand as is with the mandatory provision, then every juror, every bailiff, every judge, every attorney, every plaintiff in the entire state will know that every doctor is good for a $200,000 judgment once every year. This bit of evidence will unavoidably tarnish every civil suit and it has already been declared improper that the jury have this information. I doubt that Mr. Block has even considered this in making all of his claims for the necessity of this mandatory provision.

I must confess I am not actually sure what committees you serve on and what direct interests you may have in the changes in this malpractice law. However, I would urge, if it is at all possible, to at least let my feelings as a single practicing physician be known among all of the loud noises and confusion over the legislation. At the present time, 2-17-77, I have not paid the MICA insurance, I have not sent back Judge Ripley's court order, I have not taken part in any of the suits, and I am at a loss and quite disturbed about the future of myself and my family. I do not knowingly wish to go out and break the law but the alternative, unfortunately, for me would be bankruptcy. Any help that you could give in this matter would be greatly appreciated.

Sincerely yours,

Harvey F. Zartman, M. D.

HFZ:EM

HB
491

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 31, 197

SUBJECT: Use of Social Security Account Numbers as an Identifier on State Forms (W.O. 3499)

TO: The Honorable Charles Parr
Chairman
House HESS

FROM: Deborah Behr
Research Analyst

I recently received the delayed reply from the University of Alaska regarding the use of social security account numbers on its forms. I have revised the memorandum that I forwarded to you earlier this session to reflect the receipt of this material. Basically the University appears to use the social security account number as a key identifier for many of the University's computer programming systems.

This completes the study. If you have further requests for information on this topic, please do not hesitate to contact me at 465-4917.

DB:mo
Attachments

Survey of Use of Social Security Account Numbers on State Forms

EXTENT OF USE

At present the State of Alaska uses approximately 6,500 forms (excluding University of Alaska) to administer its many programs and its personnel and fiscal operations. Of those forms, 13% or 832 request social security account number from persons applying for services or assistance. The University of Alaska utilizes an additional 43 forms, which ask for an individual's social security account number. Only 15% of all the forms requesting social security account numbers are computerized at this time.

The Department of Labor, Military Affairs, and Administration use 60% of all forms requesting social security account numbers. The Department of Labor utilizes social security numbers as its primary identifier on its Unemployment Compensation forms and Workmen's Compensation files. The military serial number was recently changed to be the same as the individual's social security account number, and the Department of Military Affairs utilizes the military serial number on many of its forms. The Department of Administration's statewide personnel, payroll, and retirement systems use social security account numbers as a key identifier.

IMPACT ON PUBLIC

The 13% of state forms which request social security account numbers are generally those in heavy use by the general public. They range in scope from application for a driver's license to an application for a hairdresser's license. At any given time, the average citizen probably has at least 3 cards on his possession for which he was requested to release his social security account number. They may include:

(1) Driver's License
(2) Voter Registration Card
(3) Hunting and Fishing License
(4) State Employee Identification Card
(5) University of Alaska Student Identification Card

LEGAL REQUIREMENTS

In response to a questionnaire forwarded to the agencies that requested social security account numbers on some of their forms, the agencies cited laws and regulations to justify their request. Most of these citations were related in some way to federal government requirements. For example, income tax, social security retirement, and certain public assistance laws were often cited. Only rarely were state laws or regulations cited and those were with regard to contractor's licensing and labor assistance programs.

JUSTIFICATION FOR USE

Although most agencies could not cite a specific law or regulation requiring the use of social security account numbers, many stressed the

importance of the number as a positive method of verifying identification. The Department of Revenue's reply, for example, noted "the use of numbers has a greater degree of accuracy as handwriting or printing often leads to misspelled names." The Office of Elections stated that it requests social security account numbers "in order that we may identify the various people with the same name or initials." A few departments stressed that they would not deny a person services or assistance if he refused to supply his social security number.

Some agencies requested social security account numbers from their clients in order to comply with a request from another department, agency, or office. For example, the Department of Health and Social Services uses the social security account number on its public assistance fraud form in order to request information from Department of Labor, whose system uses social security account numbers as identifiers. Other departments, such as Public Safety which have unique personnel or payroll forms, use social security account numbers quite frequently so that their personnel information is comparable with data collected by Department of Administration.

OTHER ISSUES

Recently the Office of the Ombudsman has become involved in several complaints concerning the requirement that a social security account number be supplied when applying for certain state services, such as a driver's license or University of Alaska library card. The Department of Public Safety, in particular, has responded to these complaints by posting signs in their offices stating that an applicant may refuse to release his number and will not be denied a license because of this action.

Also, a bill has been introduced in the Senate on this topic--SB 283. That bill states that no person shall be required to release his social security account number in order to obtain state services or assistance. An exemption is provided for programs that are required to ask for the number as a condition of their federal-state plan. The bill is currently in Senate Judiciary Committee.

SURVEY OF FORMS EMPLOYING SOCIAL SECURITY ACCOUNT NUMBERS
CURRENTLY IN USE IN ALASKA PROGRAMS

Department or Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
OFFICE OF GOVERNOR	22	13	20	2	0	None	1	See separate division detail.
Governor's Office	1	0	1	0	0	None	0	Personnel/payroll
Commercial Fisheries Entry Commission	14	13	14	0	0	None	0	Application and program forms.
Human Rights Commission	3	0	2	1	0	None	0	Complaint forms; (Note: These forms are under revision and social security numbers will be removed.)
Alaska Police Standards Council[1]	3	0	3	0	0	None	0	Personnel/payroll; program forms
Alaska Historical Commission	1	0	0	1	0	Grant: IRS Reg.	1	Grant application including personal services.
OFFICE OF LT. GOVERNOR	3	1	3	0	0	None	0	Election forms.
DEPARTMENT OF ADMINISTRATION	95	28	90	4	1	IRS Reg.; FICA Reg.; Treasury Dept. Reg.	16	Personnel/payroll; retirement (teachers', PERS, Social Security); pioneer benefits; insurance; finance; deferred compensation; data processing; housing.
DEPARTMENT OF LAW	3	0	2	1	0	Payroll: 26 USC §6109(d) Child Support Enforcement: Title IV-D; Social Security Act	2	Payroll; testimony form; directions for service form.

Department or Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
DEPARTMENT OF REVENUE[2]	57	17	50	4	3	Tax forms: 26 USC §6109(d)	31	Personnel/payroll; individual and corporate tax forms; fishing, hunt trapping license; fur dealer licen taxidermy license; business licens liquor license; coin operated equi ment distributor's patent; cannery license, contractor's license.
DEPARTMENT OF EDUCATION	22	12	21	1	0	Personnel/Payroll: Social Security Act	1	Student loan; teacher certificatic vocational rehabilitation.
DEPARTMENT OF HEALTH & SOCIAL SERVICES 3	61	7	18	39	4	Title IV-A; Title IV-D; 45 CFR 206(a)(v)(A) 45 CFR 232.10 45 CFR 250.71 45 CFR 302.70 45 CFR 302.71	11	Personnel/payroll; catastrophic illness form; public assistance forms; fraud complaint form; API forms; alcoholism forms; child support enforcement; state medical ID card; corrections booking and parole form; Harborview personnel forms; mental health referral form nursing family folder; social services forms; violent crimes compensation form.
DEPARTMENT OF LABOR[4]	257	26	241	1	15	8 AAC 85.020 8 AAC 85.040 8 AAC 85.030	16	Employment service forms; unemployment insurance forms; wage and hou forms; workmen's compensation form personnel/payroll; fisherman's fun forms; occupational safety and health forms.
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT 5	39	0	37	2	0	AS 08.18.021(1) (contractor)	2	Occupational licensing; AK Transportation Commission; uniform form for securities; broker dealer.

Department or Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
DEPARTMENT OF MILITARY AFFAIRS	157	0	157	0	0	Army Reg. 600-2; Air Forces Reg. Disaster Office Reg.	157	Army now requires use of social security number as military serial number. Serial number is requested on most program forms.
DEPARTMENT OF NATURAL RESOURCES	4	0	0	3	1	Veteran's preference: AS 38.05.067 AS 38.05.035(A)(4) 11 AAC 54.250(B)	1	Personnel/payroll; employee insurance; veteran's preference for land (Note: Veteran's military serial number is now social security number. See Department of Military Affairs for law citation.)
DEPARTMENT OF FISH & GAME	6	1	3	2	1	None	0	Personnel; cannery ticket; hunting, trapping, sport fish ID card; pilot house/trip ticket book; commercial fishing gear and/or vessel license transfer form.
DEPARTMENT OF PUBLIC SAFETY	53	10	28	26	4	For payroll functions: IRS Reg. Social Security Reg.	3	Personnel/payroll; security guard licensing; background investigation state trooper forms, wanted persons report, press reports; service requests; motor vehicle form; driver's record and licensing; pilot training; state ID card; fish and game protection forms; aircraft form.
DEPARTMENT OF PUBLIC WORKS	18	1	14	4	0	None	0	Personnel/payroll; marine transportation; aviation.
DEPARTMENT OF HIGHWAYS	8	3	8	0	0	None	0	Personnel/payroll
DEPARTMENT OF ENVIRONMENTAL CONSERVATION	0	0	0	0	0	Not applicable	0	None

Department of Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
DEPARTMENT OF COMMUNITY REGIONAL AFFAIRS 6	15	1	0	11	4	None	0	Payroll/personnel; senior citizen's tax exemption program; day care program; farm use program; expense reports; manpower (CETA) (Note: Five forms used by the department contain social security number at request of Research Division, Legislative Affairs Agency. The request was made in conjunction with data matrix project.)
LEGISLATURE	2	0	1	1	0	Personnel/payroll: Social Security Act	1	Personnel/payroll
COURT SYSTEM	5	0	1	3	1	None	0	Personnel; child support application form; cash appearance bond form; report of coroner call form; inability to afford counsel form.
UNIVERSITY OF ALASKA	43	16	7	6	30	Personnel/payroll: IRS REG; Cooperative Extension: Federal Civil Service Req	7	Admissions; accounts services; general ledger; business office; correspondence stuoy; personnel/payroll; rural education; travel reimbursement; physical plant; cooperative extension activity report; housing forms; ID card.
TOTAL	875	136	701	110	64		249	

Revised 5/31

FOOTNOTES

1. The Alaska Police Standards Council notes that its regulations (6 AAC 70.010(d)) permit the council to request necessary information to evaluate merits of applications.

2. The Department of Revenue cited AS 16.05.360 as justification for requiring social security number on its fish and game license forms. That statute permits the commissioner to request any reasonable information, but does not specifically itemize the requirement of social security numbers.

3. The Department of Health and Social Services cited statutes that require them to cooperate with federal government in public assistance programs (AS 47.05.010(11), AS 47.25.330(3)). These statutes do not specifically require the use of social security numbers on public assistance forms. Many federal programs, though, require the use of social security numbers for ID and tracking purposes. "Cooperating" with the federal government therefore might be seen as a requirement for requesting social security numbers from clients.

   The Department of Health and Social Services also cited statutory mandate (AS 47.37.040(9)) to "make available relevant statistical information including number of persons treated" in alcoholism programs. The department cited this reference as documentation of allowing them to collect information including social security number, but not a strict requirement of the inclusion of that data item.

   The Department of Health and Social Services cited AS 47.10.010, AS 47.10.030, and Children's Rules, Rule 10, as documentation that the Division of Social Services is responsible for certain child custody matters that require the use of social security numbers in order to locate missing parents.

4. The Department of Labor has also cited laws (AS 23.30.100, AS 23.30.155, AS 23.35.050) which permit, but do not require, the use of social security numbers for certain Workmen's Compensation and Fisherman's Fund forms.

5. The Department of Commerce and Economic Development has cited AS 08.64.190 to support use of social security numbers in licensing physicians. That statute gives the licensing board the authority to require "other information" on its application which the board considers "necessary" in order to evaluate the candidate.

6. The Department of Community and Regional Affairs cited AS 29.53.035 to support its use of social security numbers in its form use assessment application. That statute gives the state assessor the authority to prescribe forms which include such information which may be reasonably required to determine the entitlement of the application.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 5, 1977

SUBJECT: Survey of Use of Social Security Account Number in State Forms (W.O. #3499)

TO : The Honorable Charlie Parr
Chairman, House HESS

FROM : Deborah Behr
Research Analyst

Earlier this session, you requested a survey on the use of social security account numbers on state forms. The enclosed report is the result of that survey. The survey was done in two major stages: (1) collection of forms and (2) requesting of information on use of social security account number. Forms were collected from the Department of Administration, Division of General Services and Supply, which controls state form production. Also, specific agencies, departments, and offices were contacted to obtain information. After the forms were collected, questionnaires were forwarded to each agency asking specific questions with regard to use of social security account number, such as the reasons for including it and the legal citations requiring that agency to request the number.

The Department of Administration estimates that there are over 6,500 forms in use statewide, excluding the University of Alaska. Forms, such as the personnel application form, which are used throughout the state, were included only in the counts relating to the department that originated the form. If an agency, such as University of Alaska, had its own personnel form, that form was counted and included with that particular agency total.

As of this date, all agencies, except for the University of Alaska, have responded to my questionnaire. The University returned its forms later than other agencies. My questionnaire therefore was mailed later to the University than to other agencies. The University was requested to respond to the questionnaire by April 6, 1977.

In addition to the report, I have also included notebooks containing the forms and agencies' responses. These forms are grouped by agency in which the form is used. Also, I have included a brown notebook containing the laws cited by Departments which require them to request social security account numbers.

If you have any questions regarding this study, please do not hesitate to contact me at 465-4917.

DB:cm

Survey of Use of Social Security Account Numbers on State Forms

EXTENT OF USE

At present the State of Alaska uses approximately 6,500 forms (excluding University of Alaska) to administer its many programs and its personnel and fiscal operations. Of those forms, 13% or 832 request social security account number from persons applying for services or assistance. The University of Alaska utilizes an additional 50 forms, which ask for an individual's social security account number. Only 15% of all the forms requesting social security account numbers are computerized at this time.

The Department of Labor, Military Affairs, and Administration use 60% of all forms requesting social security account numbers. The Department of Labor utilizes social security numbers as its primary identifier on its Unemployment Compensation forms and Workmen's Compensation files. The military serial number was recently changed to be the same as the individual's social security account number, and the Department of Military Affairs utilizes the military serial number on many of its forms. The Department of Administration's statewide personnel, payroll, and retirement systems use social security account numbers as a key identifier.

IMPACT ON PUBLIC

The 13% of state forms which request social security account numbers are generally those in heavy use by the general public. They range in scope from application for a driver's license to an application for a hairdresser's license. At any given time, the average citizen probably has at least 3 cards on his possession for which he was requested to release his social security account number. They may include:

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(2) Voter Registration Card
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(5) University of Alaska Student Identification Card

LEGAL REQUIREMENTS

In response to a questionnaire forwarded to the agencies that requested social security account numbers on some of their forms, the agencies cited laws and regulations to justify their request. Most of these citations were related in some way to federal government requirements. For example, income tax, social security retirement, and certain public assistance laws were often cited. Only rarely were state laws or regulations cited and those were with regard to contractor's licensing and labor assistance programs.

JUSTIFICATION FOR USE

Although most agencies could not cite a specific law or regulation requiring the use of social security account numbers, many stressed the

importance of the number as a positive method of verifying identification. The Department of Revenue's reply, for example, noted "the use of numbers has a greater degree of accuracy as handwriting or printing often leads to misspelled names." The Office of Elections stated that it requests social security account numbers "in order that we may identify the various people with the same name or initials." A few departments stressed that they would not deny a person services or assistance if he refused to supply his social security number.

Some agencies requested social security account numbers from their clients in order to comply with a request from another department, agency, or office. For example, the Department of Health and Social Services uses the social security account number on its public assistance fraud form in order to request information from Department of Labor, whose system uses social security account numbers as identifiers. Other departments, such as Public Safety which have unique personnel or payroll forms, use social security account numbers quite frequently so that their personnel information is comparable with data collected by Department of Administration.

OTHER ISSUES

Recently the Office of the Ombudsman has become involved in several complaints concerning the requirement that a social security account number be supplied when applying for certain state services, such as a driver's license or University of Alaska library card. The Department of Public Safety, in particular, has responded to these complaints by posting signs in their offices stating that an applicant may refuse to release his number and will not be denied a license because of this action.

Also, a bill has been introduced in the Senate on this topic--SB 283. That bill states that no person shall be required to release his social security account number in order to obtain state services or assistance. An exemption is provided for programs that are required to ask for the number as a condition of their federal-state plan. The bill is currently in Senate Judiciary Committee.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

THE PRIVACY REPORT

HB 491

Issued by Project on Privacy and Data Collection / American Civil Liberties Union Foundation
22 East 40 Street New York, New York 10016 (212) 725-1

Volume IV, No. 10, May 1977

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☐ Statute Law on the Social Security Number, page 9

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WHO ARE YOU?: IDENTIFIERS AND IDENTITY DOCUMENTS

Although no one actually seems to want it, the national identity document may be close to becoming a reality.

The Administration and members of the Congress are sifting through proposals intended to cope with the problem of illegal immigration, in particular, the employment of aliens who are in the country illegally. Among the measures before them are the issuance of counterfeit-proof Social Security cards, coded to show the bearer's legal entitlement to work in the United States, and a legislative ban on the employment of persons who do not possess such proof of entitlement. If adopted, this program would bring together two essential elements of a national identity document: the universal identifier (in the Social Security number), and the identity document as a legal precondition to participation in the life of the community. But in fact, we already have the major elements of a national identity document, for the Social Security number has become,

for all practical purposes, the American universal identifier, and the manipulation of personal information as a means of controlling the participation of individuals in the activities of the community is already far advanced in our society.

THE UNIVERSAL IDENTIFIER

Originating in 1936 as an identifier for Social Security accounts, and extended a year later to state unemployment insurance programs, the Social Security number was not otherwise commonly used in public or private record systems for the next twenty-five years. It is interesting now to recall that misgivings had been expressed about the implications of the SSN as a universal identifier from the very start, requiring repeated official assurances that the government's uses of the number would be strictly limited to administration of the Social Security system. Yet the federal government itself initiated the move toward a universal identifier when, in 1961, the Internal Revenue Service adopted the SSN as a taxpayer identification number. Over the last sixteen years the SSN has become the standard identifier for federal employees, patients at V.A. hospitals, aliens, military personnel, holders of Treasury bonds, securities, and bank accounts, and recipients of all kinds of federal benefits. It is used by the states and localities for public assistance programs, school records, civil service employment, motor vehicle registration and drivers' licenses, voter registration, fishing and game licenses, even library cards, and on records sent by state and local law enforcement agencies to the FBI's National Crime Information Center. In the private sector, the number frequently appears on student and employee ID cards, hospital records, insurance policies, department store charge applications, and telephone and electricity accounts -- to name only a sampling.

A few years ago, Congress finally responded to emerging public anxiety over the proliferation of uses of the SSN. By 1974, the American people clearly had come to perceive the incessant demands for disclosure of the SSN not only as an intrusion on the right of privacy in itself, but also as a symbol of all that is threatening in modern data collection practices -- the use of information as a mechanism for social control. The spectre of the "one big dossier" keyed to the Social Security number was no longer just a literary fantasy; the public knew enough about the uses and abuses of personal records, and about the capabilities of computer technology, to have developed quite a sophisticated understanding of the potential of the SSN as a universal identifier.

Congress' first efforts were only palliative. The Privacy Act of 1974 placed a moratorium on any new uses of the SSN by federal, state, and local government agencies after January 1, 1975, except for uses thereafter specifically enacted by federal statute. It restricted existing uses to those formally authorized by statute or regulation. It required the Privacy Protection Study Commission to examine the need for further legislative or regulatory controls.

From this modest beginning, it seemed for a time as if the move toward a universal identifier might have been checked. The media picked up on the subject. Public consciousness became more acute. Increasing numbers of people registered their objections about the ubiquity of demands for the SSN -- to legislators, to the press,

to ACLU, to anyone willing to listen. Some government agencies abandoned uses of the SSN that did not meet the conditions set down by the Privacy Act.* Lawsuits were filed when other means of challenge failed. There was talk of stronger legislation to come, in particular, a proposed federal statute, numbered (fortuitously, its sponsors claimed!) H.R.1984, which would forbid any private business or organization to use the SSN without the express authorization of Congress. Expectations focused on the long-awaited studies and recommendations of the Privacy Commission, due for publication in the summer of 1977. Some optimistic souls even began to speculate on the amount of time and money it might take for various governmental and private record-keepers to convert their existing Social-Security-numbered systems to other kinds of identifiers.

The optimism was unfounded. Just weeks after passage of the Privacy Act, federal and state agencies began preparations to operate the Child Support Enforcement Program by means of the Parent Locator Service, a federal-state record-tracing system authorized by Congress in January of 1975, for the purpose of locating parents (invariably fathers) who had "disappeared" to avoid paying child support to their families. The PLS was to use the Social Security number as the principal identifier for following personal information from one record system to another.

The Child Support Enforcement Program makes a search for the missing father mandatory when the mother and children are on welfare, optional for other families to locate fathers who have defaulted on court-ordered child support payments. The search is conducted by combing records, first locally, then in other states, and finally on the federal level. Eventually, any governmental records, and even many private records, could be encompassed in the search. The task becomes easier, of course, if a common identifier is available to serve as a bridge from one record system to another, and so the Parent Locator Service logically gives impetus to broader usage of the SSN.

The November 1976 issue of the Privacy Report discussed the Parent Locator Service at some length. Conceding "that children have the right to be supported by their parents, and that it is proper for the state to take steps to enforce that right," it went on to explore the larger privacy implications of the PLS:

> ...The PLS exemplifies a danger whose realization privacy advocates have predicted for some years. Its key is the Social Security number. The Parent Locator Service uses the SSN as an identifier to trace the absent parent from one record system to another. This is precisely the kind of record trading and record linkage facilitated — almost invited — by the development of the SSN as a universal identifier, and precisely the reason for arguing that uses of the SSN should not be allowed to proliferate.

* The word "abandoned" may suggest voluntary action. This was not often the case. Usually, practices capitulated only under pressure. Many ACLU chapters carried on long negotiations with state and local agencies which were illegally using the SSN, and by confronting them with lawsuits or evidence of their violations of the Act, were eventually able to effect changes in policy. Among the most frequent targets were state universities and/or vehicle administrations.

less than two years after the Parent Locator Service was created came the next major step in the transformation of the SSN into a universal identifier. In Section 1211 of the Tax Reform Act of 1976, Congress, capitulating to rhetorical attacks on the "millions" guilty of "welfare chiseling and cheating," extended to state and local government agencies the right to use the SSN to administer their tax laws, motor vehicle registration and driver's license systems, and general public assistance laws. The purpose was twofold: to facilitate the use of motor vehicle registration and driver's license records for PLS searches, and to facilitate the comparison of public assistance program records within or between states to uncover cases of welfare fraud.[3]

With the passage of the Tax Reform Act, the battle to hold the line on the SSN was effectively lost, at least with respect to governmental record systems. Indeed, it will now be difficult for any important governmental record system to be maintained without the SSN, so strong are the pressures for the exchange of information keyed to a common identifier. The Parent Locator Service is surely only the first of many such record-trading operations to come. If this prediction seems unduly gloomy, it should be remembered that just as the SSN stands as a symbol of what people most fear about the misuse of personal record systems, it also can be invoked as a symbol of what people most desire -- efficiency, productivity, delivery of services, "law and order."

It would be foolish to argue that a common identifier is not useful. Of course it is. The real questions are whether the common identifier is essential in accomplishing what we wish to accomplish by the use of personal records, and what effects such an identifier has on the values we wish to preserve, most particularly, the right of privacy. Privacy advocates in the debate on the Tax Reform Act pointed out that state and federal Parent Locator Services were already authorized to use the SSN, and were already able to get just about any records they needed, with or without the SSN. They pointed out that none of the Parent Locator Service agencies had asked Congress to expand use of the SSN into state and local record systems, or shown any evidence that a single identifier was essential to their work. They also pointed out that the SSN is itself vulnerable to fraud, duplication, and error.[4]

[illegible] The first version of Section 1211 is actually counted a victory by some privacy advocates, in view of its legislative history. The amendment began as a response to the plea of state tax agencies to be allowed to use the SSN in order to coordinate their [illegible] with federal tax authorities. It emerged on the floor of the Senate as a virtual repeal of all Privacy Act restrictions on state and local uses of the SSN. A key [illegible], with Senator Gaylord Nelson leading the fight for privacy, added [illegible] authority to state and local agencies for the four enforcement purposes, plus a catch-all clause for use of the SSN in exchanges of information with a state or federal Parent Locator Service.

[illegible] The [illegible] report [illegible] the Privacy Act [illegible] "prohibition" and "protection" [illegible] conducted by Social Security [illegible] by the committee [illegible] new policies and practices), mainly [illegible] (several million [illegible] to have come from [illegible] recommended), and [illegible] the [illegible] of [illegible] to "use the [illegible] of 'routine use' [illegible] [illegible] [illegible]

But the mystique of the universal identifier as a panacea for society's ills, disorders, and crimes proved too strong. Here is a sampling of the rhetoric that carried the day, from a speech by Russell Long on the floor of the Senate:

> ...Now, when we are trying to catch a bunch of chiselers, cheaters, liars, fakers, and frauds, here we see an amendment to stop us. Every honest man is carrying credit cards and other identification trying to prove who he is. But if you happen to be some runaway father, trying to avoid doing your duty to your own children, or trying to cheat on welfare by living on there under 18 different names, you do not have to identify yourself....You do not have to identify yourself when you start chiseling and cheating on Uncle Sam....
>
> My feeling about it is if you want your privacy protected, all you have to do is set out on foot, and between now and sundown, you can be in the beautiful George Washington National Forest and nobody is going to come there looking for you. You can stay there as long as you want to stay in there, you can come out anytime you feel like it, or not come out if you feel like that. Nobody is going to bother you.

In a context of "welfare reform," the right of privacy was cast as a cloak for evil deeds, and the true significance of the common identifier for the millions of people who don't desert their children or bilk the government was completely lost. The balancing of issues and values in this debate suggests that any future attempts to resist claims of administrative need and social utility will not be successful, and that the SSN will in time become officially, as it is now for all practical purposes, the common identifier in all of the personal records which describe the life of each individual.

We must reiterate here the symbolic importance of the SSN as a universal identifier, to combat a tendency either to minimize or to overemphasize its real significance. While it is correct to say that the SSN is not in the technical sense a true universal identifier,* the fact that it is perceived as such by so many people -- both enthusiasts and opponents -- means that it must be regarded as a universal identifier for purposes of developing public policy. To deflect objections to its use by reassuring references to the failures of the system is to miss the point. Whatever its technical deficiencies now, with time and "improvements" the SSN will become a true universal identifier because that is the way it is being used.

On the other hand, one should not be stifled into thinking that personal records would not be searched, linked, and pooled if only the SSN or some other common identifier were unavailable. Basic principles of information policy are established by daily decisions to restrict the collection and uses of personal records, and to set up existing legal barriers against their determination. The universal identifier may cloud the issue -- its very existence seems almost to invite the pooling of information (as the debate on the Tax Reform Act clearly showed) -- but the search

* A true universal identifier would be unique to each person, permanent and unalterable through life, and supported by a mechanism for verifying the identity of its bearers.

for a meaningful right of information privacy must go far deeper than the question of the universal identifier.

In recognition of the basic validity of the public's perceptions, we must acknowledge the acceptance of the SSN as a universal identifier, and go on to examine the long-range implications of that development.

TOWARD A NATIONAL IDENTITY DOCUMENT

The next logical step after a universal identifier is a national identity document. The HEW Advisory Committee on Automated Personal Data Systems clearly drew the connection in its 73 report Records, Computers, and the Rights of Citizens.

> To realize all the supposed benefits of /a universal identifier/, mandatory personal identity cards would have to be presented whenever called for. Loss or theft of an /identity/ card would cause serious inconvenience, and the mere threat of official confiscation would be a powerful weapon of intimidation.

Further, the Committee envisioned a national population register as an implicit outgrowth of a universal identifier, serving "as the skeleton for a national dossier system to maintain information on every citizen from cradle to grave." For this reason, the Committee opposed further steps toward the development of a universal identifier.

That was in 1973. We know now that the Committee's recommendation was not heeded. It seems, too, as if the Committee's predictions about the identity document are about to be realized.

Just as Section 1211 of the Tax Reform Act was adopted in a frenzy of rhetoric about "welfare chiseling," the national identity document may come into being in the present ado over illegal immigration. Like welfare, immigration is a vexing and emotionally charged subject, and the problem of illegal immigration, particularly from Mexico, has proved as intractable to straightforward "solutions" as the problem of welfare fraud.

Among the major proposals being studied by the Administration and the Congress for combatting illegal immigration, and especially the employment of illegal aliens, are the development of counterfeit-proof, coded Social Security cards, and legislation forbidding employers to hire persons not possessing the properly coded cards. Social Security cards would be designed to prevent physical alteration, duplication, or forgery, and marked to show whether the bearer is legally entitled to work in the United States (by virtue of citizenship or status as a legal resident alien). An employer would be required to inspect the card before hiring any worker, and to ascertain both the bearer's legal right to work and his or her identity as the rightful holder of the card. An employer who knowingly hires a person not legally entitled to work would be subject to criminal penalties.*

* ACLU has long opposed criminal penalties upon employers hiring illegal aliens. Such penalties could only exacerbate existing patterns of racial and ethnic discrimination in employment, by creating greater risks for employers hiring applicants who appear to be foreign-born. Employers' reluctance to hire such persons, even if they are in fact legal residents or citizens, will increase the discrimination now widely practiced against black and hispanic workers.

The transformation of the Social Security card into an official identity document and prerequisite for employment would bring this country perilously close to the adoption of an internal passport. Despite disclaimers by its proponents of any such intention, a document of personal identification whose disclosure is required before any employment can legally be obtained would be in fact, if not in name, a domestic passport. To thwart attempts at fraud or forgery, the card will have to carry such unique personal identifiers as photograph, signature, and fingerprints. It will also carry codings to show the status of the bearer as an "authorized" worker. It will thus become an "employment passport." Employers will be forced to serve as agents of the government for the purpose of determining each applicant's identity and legal right to work.

In time, such an "employment passport" would unquestionably become a national identity document. For a start, the need to verify the identity of the cardholder would require -- as the HEW Advisory Committee foresaw -- the development of a national population register. The signatures, photos, fingerprints, and other identifying information imprinted on the card would have to be compared to something else for verification, and that "something else" could only be a register containing matching signatures, photos, fingerprints, and other personal data. A national register is not encompassed in the current proposals, but is the only logical way to make the system work.

The new Social Security identity card would be the one common document possessed by the majority of the adult population. Once established as a reliable proof of identity, the card would lend itself to many uses flowing quite naturally from its availability. For example:

-- The police would be able to stop people on the street or in their automobiles and demand to see their identity cards. Proponents of the current proposals stoutly deny that this is their intention, and one need not question their sincerity. But such an eventual usage would be terribly difficult to prevent. The legal groundwork has already been laid, in the Supreme Court ruling permitting police officers to conduct a full search of both motorist and vehicle without a warrant when the motorist has been arrested for a traffic violation. U.S. v. Robinson, 414 U.S. 218 (1973). The technological groundwork has also been laid, in the increasing use of squad car computer terminals giving instant access by the police officer in the field to centralized state, regional, and national wanted persons, stolen vehicle, and criminal history files. The broad police power to stop, question, and search, added to the technological capability for the instant retrieval of criminal justice information, creates the perfect context for the development of a police identity document. Perhaps we would never go so far as to require by law that people carry their identity documents at all times, but it would become very "convenient" always to have it on hand -- especially if one is black, hispanic, poor, long haired, young, a frequenter of "questionable" gathering places, or given to walking on deserted streets in the dark of the night.

-- A population registry, especially one containing photographs and fingerprints, would inevitably have other compelling uses in addition to the enforcement of the immigration laws. The detection of welfare fraud and the apprehension of criminal fugitives are the two most obvious examples to come to mind. It would be most difficult to forbid the use of such a registry in law enforcement situations hinging on the verification of identity; that would be asking too much of human nature.

-- Both public agencies and private organizations which now employ the SSN as an identifier would naturally find the national identity document a great convenience, and would incorporate it into their information systems. So too would those agencies -- and especially private businesses -- which now require some sort of proof of identity, such as a driver's license. Could one really blame a local merchant for asking to see a customer's identity card before accepting his personal check? Once more, the presumed reliability of the document would lead to its widespread use by the simple process of logic.

-- Although initially encompassing only adults, the system would eventually be applied to children as well. There have already been serious proposals to give children Social Security numbers when they enter school, or even at birth, as a way of preventing illegal aliens from sending their children to public schools and clinics, and, again, as a means of combatting welfare fraud through the collection of benefits for fictitious children. Despite the repugnance of the thought to most people right now, a good case could be made for issuing identity documents to children, and ultimately to newborn infants, once the system has become an accepted fact of life in the adult world.

-- If an identity card can be marked to indicate the bearer's entitlement to work, it can also be marked to show other entitlements, or disabilities. Arguments would certainly be made for indicating criminal convictions or status as a welfare recipient on the document. Employers are always eager to investigate the criminal histories of job applicants, and a coded identity document would save a lot of trouble getting access to criminal justice records. If the documents of welfare recipients were coded, employers could be forbidden to hire them just as they would be forbidden to hire illegal aliens* -- and conversely, the working poor or the occasionally employed could be prevented from collecting public benefits open only to "certified" welfare recipients. If these speculations sound extreme, they are only adaptations of present practices enhanced by the availability of a national document of entitlement.

-- What more formidable method of social control could be devised than the removal of the identity card on which one's livelihood, or even freedom to walk the streets, may depend, or the coding of the card to make the bearer ineligible for certain privileges, benefits, or basic civil rights and civil liberties?

None of these eventualities is intended or even desired by most of those who view an identity verification system as the answer to the illegal alien problem. But we have learned -- or should have learned -- from past experience that information systems are almost invariably perverted from their original purposes, and we must be extremely cautious in establishing a new one which has such obvious implications for the right of privacy.

It may well turn out that the identity card scheme is a politically unacceptable solution to the illegal alien dilemma just at present, but we can be sure that the idea will not be completely abandoned. The universal identifier and the national identity document will always be attractive -- and dangerous -- because they are

* Or, employers might be legally required to report the hiring of any such applicant to the welfare agency, so that the person would automatically be removed from the welfare rolls.

effective techniques for controlling people. When frustrations run high over difficult social problems, it is all too easy to turn to "benign" solutions of information control without thought of what those solutions really portend for the quality of our lives./TRH

STATUTE LAW ON THE SOCIAL SECURITY NUMBER

To counteract the prevailing note of pessimism in these pages, it may be useful to remind readers of the Privacy Report that there are still some statutory restrictions on uses of the Social Security number under the Privacy Act of 1974 and the Tax Reform Act of 1976. Here is a summary:

1. It is unlawful for any federal, state, or local government agency to deny a person any right, benefit, or privilege provided by law because the individual refuses to disclose his or her Social Security number, except in the following circumstances:

   A. To an agency maintaining a system of records operating before January 1, 1975, which required the disclosure, under a statute or regulation adopted before January 1, 1975, to verify the person's identity.

   B. Additionally, as required by federal statute. At present, this exception covers uses by state and local government agencies for the administration of tax, motor vehicle registration, driver's license, and general public assistance laws, and for responses to requests for information by a Parent Locator Service agency.

2. In requesting disclosure of an individual's Social Security number, an agency must inform the individual:

   A. Whether disclosure is mandatory or voluntary.

   B. By what statute or regulation its request is authorized.

   C. What uses will be made of the number.

3. It is a misdemeanor for a person to disclose, or use or compel the disclosure of the SSN of an individual in violation of any U.S. law. It is also a misdemeanor for a person to make any "willful, knowing, and deceitful" use of his or her own SSN for any purpose.

4. Private organizations and businesses are neither empowered nor forbidden by law to use the SSN. Thus they have no legal right to require disclosure of the SSN, but one's only ultimate remedy, after argument fails, is to take one's business elsewhere. Obviously, this is not always an option.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

HB

549

For your info

KIINUK, INC.
FAIRBANKS DRUG TREATMENT CENTER

1221 Coppet
Fairbanks, Alaska 99701
(907) 456-5715

Frank L. Gold, EdD
Program Director

David M. Cammack, MD
Medical Director

November 3, 1977

Avrum Gross, Attorney General
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Av,

In response to a letter received from the State Office o Alcoholism & Drug Abuse, I (with help) have reviewed House Bill #549, "An Act revising the laws relating to drug abuse in accordance with the Uniform Controlled Substances Act."

On the whole, the bill is not bad. It appears to be patterned after the federal act with various categories of drugs based on their relative physical and psychological dependence. Having an advisory committee which passes recommendations along to the Commissioner of Health and Social Services (who then promulgates regulations) is probably desirable as it allows for flexibility.

Now the perceived problem area: the committee has a good mix of members, but why are there no individuals who are involved with the rehabilitation of drug abusers? Why are there no attorneys (particularly those that deal with such drug cases)? Maybe even someone from law enforcement?

The act classifies amphetamines and cocaine as Schedule drugs; this is an attempt by the law enforcement folks to still make the use of cocaine a very serious drug offence. It also attempts to include hashish and hashish oil under Schedule II. The other substances I might agree with being under Schedule II, but not hashish, hashish oil, and cocaine. It would seem that the determinations were made on the basis of cost in order to include these three substances under Schedule II (especially since marijuana is under Schedule V).

I have some concern about the penalities as outlined under Section 17.17.250. While on the surface it would appear to be more lenient than the present penalties, with presumptive sentencing being given serious consideration by the State the reverse may be true (and might seriously affect treatment options). I am not opposed to putting a non-addicted "pusher" in jail for a lengthy period of time, but I am opposed to doing so if the individual is also addicted and it can be shown he/she was selling in order to support their own habit. The presumptive sentence

plan may mean no treatment can be provided until after the prison term is completed.

Section 17.17.280 is a throwback to present law; the "intent to deliver" language should be stricken from this section if the former section is to have any real meaning.

Under Schedule II, the financial penalty for possession of cocaine has increased substantially over present law (although the prison time is decreased). That might be okay, except that it would appear to be the result of higher income folks getting caught--and allowing them a substantial fine rather than the embarrassment of a prison term or substance. The only problem I see is that if some poor guy gets caught, the burden of a $2000 fine might be prohibitive. Again, cocaine does not belong under this Schedule category.

I am pleased to see the section dealing with required treatment for addicts (Section 17.17.320 D). My only concern here is that judges be given the option of treatment facilities (not only lock-ups and therapeutic communities). We have been dealing with heroin addicts, have them on methadone, and maintain strict control. The point is there are many alternatives possible--and I am concerned that therapeutic communities (most of which cannot produce the results desired) would be seen as the only treatment placement...AND PAROLE OFFICERS CANNOT BE GIVEN THE RESPONSIBILITY TO MAKE THE ACCEPTED RECOMMENDATION.

Proposed Section 17.17.340 says a penalty imposed for violation of this chapter is in addition to, not in place of, a civil or administrative penalty or sanction otherwise authorized by law. This would apparently keep in the civil penalty for the possession of marijuana because it is authorized by present statute, 17.12.110. This is a real anomoly in that it would permit one to be civilly handled for possession of marijuana, but not subject to any prosecution for sale of marijuana. This section must exclude marijuana if the previously mentioned reduced penalties are to make any sense.

This bill is probably more positive than negative. It certainly is positive in its treatment of heroin addicts, and youth who possess small quantities of cocaine and marijuana. There are some ambiguities that will need to be cleaned up to make this a workable bill, but all in all if the proper folks get on the advisory committee and if the commissioner uses their advice wisely, we should end up with better laws controlling the possession and sale of prohibited substances than at the present time.

Sincerely,

Frank J. Gold

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. 443 549
Title An Act revising the laws relating to drug abuse in accordance with the Uniform Controlled Substances Act.
Requested by Office of the Governor Date 5-25-77

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Prosecution

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
The proposed bill is designed to implement a comprehensive, revised statutory scheme to regulate the possession, use, sale and distribution of all abusable drugs. Certain provisions of the bill will result in an increase in prosecutorial activity such as the provisions pertaining to forfeitures, while others are expected to result in a concomitant decrease. Changes may occur in the number of offenses charged and in the number of trials. However, it is expecte that any such changes will require the redirection of present resources, rather than an increase.

Without some experience under the bill, it is impossible to accurately project either cost increases or cost savings under the bill. Other criminal justice agencies that will potentially be affected by the bill include the Alaska Court System, the Department of Public Safety, the Division of Corrections, Department of Health and Social Services, and the Public Defender Agency.

IV. DATE 5-25-77 PREPARED BY DANIEL W. HICKEY, CHIEF PROSECUTOR
AGENCY Department of Law - Criminal Division
PHONE 465-3428

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

HB 549

May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill designed to implement a comprehensive and more rational statutory scheme to control the possession, use, sale and distribution of illicit drugs in Alaska through a logical classification and penalty system.

The bill is a modified version of the Uniform Controlled Substances Act, promulgated by the National Conference of Commissioners on Uniform State Laws. It is designed to provide for a high degree of uniformity among the laws of the several states and the federal government thereby creating a network of federal and state law enabling government at all levels to develop a coordinated and effective approach to the enforcement of drug laws. To date, the Uniform Act has been adopted in at least 42 other jurisdictions.

Alaska's present statutes relating to drug offenses are confusing and often inconsistent with each other, particularly in terms of the range of penalties provided. In general, they constitute a hodgepodge of individual statutory provisions of varying age that have been adopted in response to individual problems as they became apparent. This situation has been compounded in recent years and months by judicial decisions such as those in Ravin v. State, 537 P.2d 494 (Alaska 1975), pertaining to marijuana and, more recently, in State v. Erickson, Anchorage Superior Court No. 76-5772 Cr. (December 22, 1976), pertaining to the classification of cocaine as a narcotic.

Immediately after the Erickson decision, I asked the attorney general and the commissioner of public safety to make a comprehensive review of our drug laws and try to arrive at a coordinated realistic state policy toward the classification of drugs and the enforcement of drug laws. That has not been easy. As I am sure everyone recognizes, attitudes about drugs in society vary widely, and trying to reach a position which can be supported by all elements of the law enforcement community takes a great deal of time. We have spent that time. Extensive conferences have been held between members of the Metro Unit, other members of the Department of Public Safety, and the state prosecutor's office. Each section of this proposed bill has been discussed and debated at length. I am sorry to be so late in introducing this bill, but in my mind it was critical that the bill represent a combined law enforcement perspective and I felt that it was worthwhile to take the time to reach that consensus.

The time at which this bill is introduced will make it difficult, if not impossible, to consider it in depth this session. There is, however, a perfect vehicle for its analysis between sessions. The Criminal Code Revision Subcommission, chaired by Representative Gardiner, will be completing their work on the entire criminal code before the legislature convenes next January, and hopefully this bill can be handled in an orderly fashion as a part of that total revision effort.

While the bill is primarily the product of a series of working sessions between the Department of Public Safety and the Criminal Division of the Department of Law, representatives from several disciplines and interest groups have been consulted extensively and to some extent have participated in the drafting of this bill. These include law enforcement personnel, defense attorneys, pharmacists, scientists, social workers, and members and staff of the Criminal Code Revision Subcommission. Although each of the various interests who have been consulted and involved in the drafting of the bill may not agree with each provision in the bill, there is general consensus that overall the bill constitutes a badly needed and significant improvement over present statutes.

The main objective and advantage of the Uniform Controlled Substances Act and of this bill is that it creates a single coordinated statutory system of drug control similar to that now in effect at the federal level and in at least forty-two other states through classification of all abusable drugs into five schedules. Each schedule has its own criteria in relation to the others for inclusion of a drug based upon the degree of danger to the public health and safety which is to be assessed in accordance with a series of specific classification criteria set out in the bill. An additional mechanism is provided for in the bill to administratively add, delete, or move drugs from one schedule to another by regulation adopted in accordance with the Administrative Procedure Act.

There are two distinct advantages to such a regulatory system. First, persons within the legitimate drug industry are subjected to essentially the same standards and requirements at both the state and federal levels. Second, the statutory scheme proposed will permit the state to respond quickly and efficiently to changes in the use and abuse of drugs without repeatedly seeking legislation when more stringent or even less stringent controls are found necessary and appropriate. The classification system established in the bill will allow, subject to legislative nullification and in accordance with prescribed standards, for the administrative inclusion or rescheduling of substances based upon new scientific findings and the abuse pattern and potential of a substance after public hearings.

Another objective of the bill is to establish a closed regulatory system for legitimate handlers of controlled substances in order to curtail drug diversion into illegitimate channels. This system requires, for example, registration with a designated state agency, maintenance of records and the use of uniform order forms in conformity with federal law.

While the bill does not directly provide for specific drug treatment, rehabilitation and research programs, it does provide for registration of such programs and individuals involved in the handling of drugs for research, treatment and rehabilitative purposes. Thus, the bill explicitly makes education and research an integral part of the total law enforcement effort with respect to drugs through creation of a viable research environment.

From a law enforcement perspective, the bill constitutes a substantial improvement over present statutes in terms of the classification and penalty structure, the linkage it will provide with federal and other state enforcement systems, its forfeiture provisions, and its provisions dealing with a number of miscellaneous subjects such as forged prescriptions.

Additionally, the penalty structure of the bill includes a comprehensive presumptive sentencing schema largely patterned after legislation which I submitted to you earlier this session. This particular feature, along with a penalty distinction between casual sales of illicit drugs and those which occur in a commercial context, make the bill somewhat unique among jurisdictions which have adopted the Uniform Controlled Substances Act. The presumptive sentencing provisions are designed to further rationalize the penalty structure for drug offenses and to eliminate as much room for disparity as possible in sentences imposed for similar offenses committed under similar circumstances. They are also intended to provide emphasis on the more serious offenses under the bill such as sales of controlled substances to minors and "commercial" sales of heroin, cocaine, and amphetamines.

I believe that this bill represents a carefully thought through focal point for a comprehensive examination of Alaska's drug statutes which, as I have indicated, are badly in need of revision. I urge your serious consideration of the bill during the interim and, more importantly, the subject it addresses, and I trust that the bill will be of assistance to the Criminal Code Revision Subcommission in their consideration of the subject. Attached is a sectional analysis which explains individual provisions of the bill in more detail.

Sincerely,

Jay S. Hammond
Governor

HB549

SECTIONAL ANALYSIS

* Section 1. Adds Chapter 17 to Title 17 entitled the Uniform Controlled Substances Act.

Article 1. Standards and Schedules.

Sec. 17.17.010. Authority to Schedule Controlled Substances. Establishes the commissioner of the Department of Health and Social Services as the administrator of the Act; the commissioner, upon the advice of the Controlled Substances Advisory Committee, may add, delete or reschedule substances according to their degree of danger; provides standards for the committee to use in determining the degree of danger of a substance, including for example, the abuse pattern and the biomedical hazard of the substance.

Sec. 17.17.020. Controlled Substances Advisory Committee. Establishes the Controlled Substances Advisory Committee, provides for its composition, the terms of its members and their compensation; sets out the procedures for adding, deleting, or rescheduling (reclassifying) substances in the schedules.

Sec. 17.17.030. Nomenclature. Provides that a substance is not to be excluded from the schedules if, for example, its trade name differs from the chemical designation in the schedules.

Sec. 17.17.040. Schedule I. Establishes Schedule I substances as those having the highest degree of danger; Schedule I presently includes, among others, opium, codeine, hercin, morphine, methadone, and their derivatives.

Sec. 17.17.050. Schedule II. Provides that Schedule II substances are those less dangerous than the substances in Schedule I and more dangerous than those in the other schedules; Schedule II presently includes amphetamines, coca leaves, and their derivatives.

Sec. 17.17.060. Schedule III. Establishes Schedule III substances as those more dangerous than those in Schedule II but not as dangerous as the substances in Schedule IV; Schedule III presently includes barbituates, hallucinogenics and their derivatives, barbitol and phenobarbitol, and small amounts of codeine, morphine, and opium combined with other ingredients in recognized therapeutic amounts, and hashish and hashish oil.

Sec. 17.17.070. Schedule IV. Provides that Schedule IV substances are less dangerous than Schedule III substances but more dangerous than substances in Schedule V; Schedule IV presently includes very small amounts of codeine, morphine, sulfate, and opium combined with other ingredients in recognized therapeutic amounts; for example, many of the cough syrups available in the drug store.

Sec. 17.17.080. Schedule V. Establishes Schedule V as the least dangerous of the controlled substances and provides that marijuana is a Schedule V substance.

Article 2. Regulation of Manufacture, Distribution, Dispensing, and Research with Controlled Substances.

Sec. 17.17.150. Regulations. Requires the commissioner of health and social services to adopt regulations for the administration of the Act and allows the commissioner to charge reasonable fees for registration.

Sec. 17.17.160. Registration Requirements. Requires persons who manufacture, distribute, dispense, or conduct research with controlled substances to be registered under the Act to do so; exempts from registration employees and agents of registered persons acting in the normal course of business, exempts warehousemen and ultimate users in lawful possession from registration; allows the commissioner to waive registration requirements if the waiver is in the public interest; and allows the commissioner to inspect the premises of a registrant or applicant for registration.

Sec. 17.17.170. Registration. Requires the commissioner to register applicants when it is in the public interest to do so, and establishes the standards the commissioner must use in determining whether issuance of a registration to manufacture, distribute or dispense is in the public interest; requires the commissioner to register researchers who are registered as researchers under federal law; and provides that compliance by manufacturers and distributors with federal regulations provisions entitles them to registration in the state.

Sec. 17.17.180. Revocation and Suspension of Registration. Provides the standards under which a registration may be revoked or suspended and the procedures for disposition of the registrant's controlled substances during revocation or suspension proceedings.

Sec. 17.17.190. Order To Show Cause. Establishes procedures the commissioner must follow before denying, suspending, revoking or refusing to renew a registration; provides that the commissioner may suspend a registration without complying with these procedures if imminent danger to the public health or safety warrants immediate suspension.

Sec. 17.17.200. Records of Registrants. Sets out the requirements for record keeping by registrants.

Sec. 17.17.210. Order Forms and Prescriptions. Adopts federal law dealing with order forms and prescriptions.

Article 3. Offenses and Penalties.

Sec. 17.17.250. Prohibited Acts A; Penalties. Prohibits the unauthorized delivery of controlled substances to minors; provides maximum penalties and presumptive sentences for violation of this section according to the schedule of the drug with respect to which the violation occurred.

Sec. 17.17.260. Prohibited Acts B; Penalties. Prohibits the unauthorized manufacture of controlled substances; provides maximum penalties and presumptive sentences for violation of this section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.270. Prohibited Acts C; Penalties. Prohibits the unauthorized delivery and possession for delivery of controlled substances under circumstances manifesting an intent to deliver controlled substances as part of an ongoing commercial enterprise or to deliver controlled substances to ten or more persons; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.280. Prohibited Acts D; Penalties. Prohibits the unauthorized delivery of controlled substances and possession with the intent of delivery; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.290. Prohibited Acts E; Penalties. Prohibits possession of controlled substances except where authorized by the Act; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.300. Prohibited Acts F; Penalties. Prohibits knowingly keeping a structure used by persons in violating this chapter; fraudulent use of a registration number, obtaining controlled substances fraudulently, furnishing false information in a document required by the Act, refusing entry for an inspection authorized by the Act, and recordkeeping violations; provides penalties for these violations.

Sec. 17.17.310. Prohibited Acts G; Penalties. Prohibits public use and display of marijuana and use of marijuana while driving; provides penalties for these violations; provides that possession of marijuana for individual use is not unlawful, nor is distribution to persons 19 years of age and over of less than one ounce of marijuana for no remuneration.

Sec. 17.17.320. Sentencing. Sets out sentencing procedures for persons convicted of a violation of the Act including the circumstances where the presumptive sentence should be imposed; provides factors which may aggravate or mitigate the presumptive sentence and the procedures for establishing aggravating and mitigating factors; and provides that a person convicted of possession of a controlled substance who is addicted to a controlled substance may be sentenced to undergo treatment in addition to or instead of a fine or imprisonment.

Sec. 17.17.330. Subsequent Offenses. Provides that the presumptive sentences for repeat offenders under the chapter are higher than for first offenders.

Sec. 17.17.340. Penalties Under Other Laws. Specifies that the penalties under this Act are in addition to any civil or administrative penalties imposed by law.

Sec. 17.17.350. Bar to Prosecution. Provides that if a person is prosecuted by another state or the federal government for an act which also violates this Act, acquittal or conviction in the other jurisdiction bars prosecution in Alaska.

Article 4. Enforcement and Administrative Provisions.

Sec. 17.17.380. Cooperative Arrangements and Confidentiality. Allows the commissioner of health and social services to cooperate with other state and federal agencies in data collection, information exchange, and training.

Sec. 17.17.390. Forfeitures. Sets out the property which may be forfeited and the conditions and procedures for seizure of property subject to forfeiture under the Act; sets out the procedures for disposing of forfeited property.

Sec. 17.17.400. Burden of Proof; Liabilities. Provides that the state need not negate an exemption or exception under the Act in any pleading or proceeding under the Act; provides that no liability is imposed by the chapter on an officer carrying out his or her duties.

Sec. 17.17.410. Judicial Review. Provides for review by the superior court of administrative decisions made under the Act.

Sec. 17.17.420. Education and Research. Requires the commissioner of health and social services to encourage education and research in the field of drug abuse, and empowers the commissioner to establish research projects and educational programs.

Article 5. General Provisions.

Sec. 17.17.900. Definitions. This section defines terms used in the chapter.

* Sec. 2. Amends the definition of "unprofessional or dishonorable conduct" in the licensing provisions for physicians to conform with the provisions of the Act.

* Sec. 3. Amends AS 08.80.470, regarding licensing of pharmacists, to conform with the provisions of the Act.

* Sec. 4. Adds the duty to administer the Act to the duties of the Department of Health and Social Services under AS 44.29.020.

* Sec. 5. Provides that offenses committed before the effective date of the Act do not abate as a result of passage of the Act but that penalties in the Act which are less severe than those under prior law will apply to these offenses; provides that forfeiture and administrative proceedings begun before passage of the Act are not affected by the Act; requires the commissioner of health and social services to initially register under the Act persons licensed under present state law.

* Sec. 6. Provides that all administrative orders issued and regulations adopted under a law affected by the Act and not in conflict with the Act shall continue in affect until modified, superseded, or repealed.

* Sec. 7. Repealer.

HB
582

Committee on Judiciary

MEMORANDUM

SUBJECT: Legislation on Fishermen's Fund

TO: Avrum M. Gross, Attorney General

FROM: Representative Terry Gardiner, Chairman
House Judiciary Committee

As you know, acting on advice from your office, the legislature amended AS 23.35.060 last year to provide, in effect, that holders of commercial fisheries entry permits need not purchase commercial fishing licenses and to provide as well that an amount equal to what would have been dedicated from those revenues to the Fishermen's Fund would be derived instead from the permit fees. §§8, 15, and 16, ch. 105, SLA 1977.

This year, we have been considering ways in which to have the income, i.e., interest, from the fund deposited in the fund. This has never been done, but Assistant Attorney General Pegues has advised us informally that, as a general rule, income from a dedicated fund is the same as income from a trust fund, and it should either be spent on the fund's purpose or deposited into the fund.

Mr. Pegues has also advised that our attempt to substitute a dedication of a portion of the fees for entry permits for the amount of the dedication eliminated from license fees is probably invalid under the constitution. Alaska Const., art. IX, §7. There was certainly no intention to eliminate the amount of the dedication. All that was intended was to eliminate what was, in effect, a double fee for holders of entry permits and still retain the amount of the dedication.

Mr. Pegues has suggested that legislation is probably the cure to both problems. This is to request that a bill be drafted for the committee which would accomplish that result.

FISHERMEN'S FUND

COMPARISON OF FUND BALANCES, RECEIPTS AND DISBURSEMENTS

Fiscal Year	July 1 Starting Balances	Receipts	Disbursements	June 30 Ending Balances
1963-64	$ 242,585.96	$ 114,213.00	$ 118,081.79	$ 238,717.17
1964-65	238,717.17	126,938.15	96,695.36	268,959.96
1965-66	268,959.96	139,767.00	93,165.05	315,561.91
1966-67	315,561.91	160,317.00	144,486.97	331,391.94
1967-68	331,391.94	193,290.00	160,043.40	364,638.54
1968-69	364,638.54	195,672.00	164,072.39	396,238.15
1969-70	396,238.15	219,141.00	142,871.10	472,508.05
1970-71	472,508.05	205,254.00	202,078.02	475,684.03
1971-72	475,684.00	184,000.00	179,654.00	480,030.00
1972-73	480,030.00	243,294.00	184,945.00	538,379.00
1973-74	538,379.00	210,198.00	172,862.00	575,715.00
1974-75	575,715.00	185,016.00	167,974.00	592,757.00
1975-76	592,757.00	214,950.00	189,909.00	617.798.00
1976-77	617.798.00	246,253.00	210,246.00	653,310.00

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 582

Title Bill relating to Fishermen's Fund File J-77-009-78

Requested by Governor Date 11-10-77

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection

Budget Request Unit(s) Affected Fishermen's Fund

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			- 0 -	- 0 -	- 0 -	- 0 -
200 TRAVEL *			3.0	3.5	4.0	4.5
300 CONTRACTUAL			- 0 -	- 0 -	- 0 -	- 0 -
400 COMMODITIES *			.6	1.1	1.6	2.1
500 EQUIPMENT			- 0 -	- 0 -	- 0 -	- 0 -
600 LAND & STRUCTURES			- 0 -	- 0 -	- 0 -	- 0 -
700 GRANTS, CLAIMS, ETC. *			21.4	25.4	29.4	33.4
TOTAL			25.0	30.0	35.0	40.0

*Program Costs Only - Travel for transporting injured fishermen. Commodities - for prescriptions. Grants & Claims - Medical costs & Convalescence.

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify) - Sick & Disabled - Fishermen's Fund			25,000	30,000	35,000	40,000

POSITIONS

FULL TIME			- 0 -	- 0 -	- 0 -	- 0 -
PART TIME			- 0 -	- 0 -	- 0 -	- 0 -
TEMPORARY			- 0 -	- 0 -	- 0 -	- 0 -

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Two years ago the Attorney General's Office ruled that the "territorial waters" of the state is limited to three miles seaward. In the two years experience approximately $10,000,of claims have been denied by Fishermen's Fund. However, we do not believe this is an accurate history because knowledge of the law has stopped many claims from being filed.

It is our experience that the additional area will bring more large claims as those occurring on the high seas tend to be more serious in nature. Therefore, we are estimating that the program costs could rise as much as $25,000, in FY 79 and $5,000,each succeeding year. Travel indicated above is to transport the injured fishermen to medical facilities and return to his boat or home, which ever meets his needs.

IV. DATE 12-5-77 PREPARED BY Grace H. Wilson

AGENCY Labor - Fishermen's Fund

PHONE 465-2792

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33 (01 (Rev. 10/76)

January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the fisherman's fund. Under the benefit provisions of the fisherman's fund as they currently exist, AS 23.35.010 - 23.35.150, an injured or disabled fisherman is only entitled to receive benefits if the fishing-related accident leading to his injury or disability occurred ashore in Alaska or within "the territorial waters of the state", which extend only to the three-mile limit. In recognition of the facts that many Alaska-licensed fishermen fish offshore from Alaska but beyond the three-mile limit and that the federal government has now extended its fisheries jurisdiction to 200 miles offshore, I am proposing that AS 23.35.070 be amended to extend benefits to cover fishing-related accidents that occur inside the 200-mile fisheries conservation zone established under the Fishery Conservation and Management Act of 1976, P.L. 94-265.

Sincerely,

S/JSH

Jay S. Hammond
Governor

HB
592

Sylvia Porter

Your money's worth

Plain English used in New York laws

"(1) What does the bill do? The bill requires all consumer contracts to be: (a) written in plain English; (b) appropriately divided; (c) properly captioned.

"(2) What is a consumer contract? A consumer contract is an agreement about money, goods or services valued at less than $50,000.

"When does the bill take effect? The bill takes effect on June 1, 1978."

"I approve the bill. (Signed) Hugh L. Carey, State of New York Executive Chamber, etc..."

Miracle of miracles in the world of financial bafflegab, New York state now has on its books a pioneering law requiring that contracts from now on should not be ukases issued by one party which the other can't even understand, but be in understandable English. Marvel of marvels in the world of state politics, this bill, introduced by an upstate New York Republican, Assemblyman Peter Sullivan, was recently approved by the Democratic State Assembly, the Republican State Senate and signed by Democratic Gov. Carey.

It's a victory over enormous opposition that represents one of the few times the tactics of the opposing lobbyists boomeranged by enhancing the fight's dramatic value. The issue: a single assemblyman battling organized forces defending incomprehensible contracts designed primarily to protect the sellers and their lawyers while intimidating you, the buyer.

Now there seems no doubt that New York's historic simplification law will be copied the nation over. For the first time ever, you'll be able to understand the contracts you are signing, the bargains to which you are agreeing.

A contract is supposed to be a bargain struck between two sides, each of whom knows what they are doing and each of whom is trying to work out the best deal they can. But does this described what happens when you buy most major big-ticket products or services? Obviously not. The terms of the agreement are pre-printed, often in type too small to be read without a magnifier. You have no choice about these agreed-upon terms if you want to buy the item at all.

Worse, you probably can't understand most of this mass of verbiage even if you attempt to read it, because it is written in "lawyerese," or legal bafflebag.

As for the provisions, often they are written by a form company and included in a standard form written with the goal of appealing to the wishes of the buyer of the forms.

(New York's law, as Carey's own historically simple document of approval stated, will not become effective until mid-1978.)

What makes this tale of exceptional interest is that when Sullivan's bill got hot, suddenly prestigious lawyers and powerful trade associations protested vigorously, declaring that their old unreadable contracts would have to be reprinted, and the delay until June of next year wasn't sufficient for that. Moreover, they insisted that some of the contract terms were impossible to write in terms you and I could comprehend!

This argument actually was the admission that boomeranged. For if consumers are signing agreements every day which couldn't be understood even if they were able to read them, how could these documents be labeled as agreements to begin with? Is it not unfair and deceptive to coax consumers into signing documents that are actually beyond the comprehension of anybody but the lawyers?

The unsuccessful, intensive, behind-the-scenes scramble to stop Sullivan and his Plain English bill attracted far more attention than would have mere passage of the proposal. Thus, the result is certain to be more and more similar laws in states across the land.

This time, the federal government might look to New york for leadership in a battle it is fighting with little, if any, success. President Carter has stated frequently that he wants government regulations to be written in plain English. But so far, with enormous luck and perserverance, all you have is a picayune chance to grasp the meaning of anyone—and I'm not even including the tax laws!

The editors of the Federal Register also are having a fascinating time trying to translate some of the tortuous writing they receive from the bureaucratic agencies. Same tale.

But in this area, we, the consumers of New York, have won—and with Sullivan's law, we are pointing the way.

SERVING THE BENCH AND BAR SINCE 1888

NEW YORK, THURSDAY, AUGUST 18, 1977

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Consumer Law

By Richard A. Givens

This column, which is contributed by members of the Special Committee of The Association of the Bar of the City of New York, is a regular feature of the Law Journal. Richard A. Givens, a member of the New York Bar, recently resigned as the regional director in New York of the Federal Trade Commission.

The 'Plain English' Law

The 1977 amendment to General Obligations Law Sec. 5-701, popularly known as the "plain English" law, was sponsored by Assemblyman Peter Sullivan as A. 4535-A, and introduced in the Senate by Senator Joseph Pisani (S. 2902-B) and signed by Governor Carey on Aug. 5 as L. 1977, ch. 747. Assemblyman Harvey Strelzin, Chairman of the Assembly Consumer Protection Committee, and the staff of Senate Majority Leader Warren Anderson were instrumental in the revision of the bill. For background see Safire, "Legalesey Does It," *N.Y. Times*, 7/28/77, p. A19; Cerra, "Controversial State Bill Mandates A Curb on Legalese In Contracts," *N.Y. Times*, 8/8/77, p. 27.

Provisions of the Act

The amendment adds new subdivisions b and c to Sec. 5-701 requiring that each written agreement entered into after June 1, 1978, for residential leases or for sales of

Continued on page 4, column 1

Continued from page 1, column 1

goods or services for personal, family or household purposes must be:

"1. Written in non-technical language and in a clear and coherent manner using words with common and everyday meanings;

"2. Appropriately divided and captioned by its various sections."

A creditor, seller or lessor who fails to comply is made liable to the consumer for actual damages plus $50; the total class action "penalty" (which would appear to refer to the aggregate liability for the statutory $50 damages) is limited to $10,000.

'Fail-Safe' Clauses

The penalty is not enforceable where both parties have fully performed their obligation under the contract or against a party who "attempts in good faith to comply with this section." The section does not apply to agreements involving amounts in excess of $50,000.

As an additional safeguard against abuse, a violation of this provision does not render any agreement void or voidable, or constitute a defense to an action to enforce the agreement or for breach thereof. Sec. 5-701(c). The Sullivan proposal grew out of concern over consumer credit contracts couched in unintelligible language, understandable only by an attorney versed in the arcane subtleties of creditor remedies, or in what Sylvia Porter has called (Sylvia Porter's *Money Book*, 1976) "Baffiegab". The "plain English" movement in regard to governmental documents undoubtedly also contributed to similar concern as to private documents to be governmentally enforced in the courts.

Many fears of harmful impact on legitimate business have been expressed in regard to the bill. Proper construction in light of the objectives of the bill can avoid or mitigate many of the anticipated problems. Peter Sullivan, the sponsor, has also expressed willingness to meet with members of the business community to work out clarifying amendments which would avoid problems without diluting the objectives of the bill.

Common Law Principle

The basic principle underlying the Sullivan law is the common law doctrine that a party cannot be held to contract provisions not likely to have been comprehended (and thus agreed to) by the party. *Cf. Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 NE 2d 389 (1940); *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A. 2d 69 (1960) and authorities cited. Compare also *Jones v. Great No. Ry.*, 65 Mont. 231, 217 Pac. 673 (1923); *Lambert v. California*, 355 U.S. 225, 228-29 (1957).

The Sullivan statute should be interpreted in light of this common law principle. Experience has demonstrated that consumer contracts can in fact be drafted so as to be understandable to the lay public. See Siegel, "To Lift the Curse of Legalese — Simplify, Simplify", 14 Across the Board: The Conference Board Magazine No. 6, p. 61 (June 1977).

Background Relevant

Also relevant as background to the Sullivan Act is the concept that documents drafted by one side are to be most strongly considered against that party. E.g. *Rentaways, Inc. v. O'Neill Milk & Cream Co.*, 308 N.Y. 342, 345, 126 NE 2d 271, 273 (1955); *Taylor v. United States Casualty Co.*, 269 N.Y. 360, 364, 199 N.E. 232, 233 (1936); *Bay State Smelting Co. v. Ferric Indus., Inc.*, 292 F. 2d 96 (1st Cir. 1961); *Matter of Davis*, 14 Misc. 96, 98 203 N.Y. Supp. 482, 484 (Surr. Ct. 1933); Restatement, Contracts Sec. 236(d) & Comment (d) (1932); 3 Corbin, Contracts Sec. 559, p. 302 (rev. ed. 1960); Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 (1964). This is done in part because of an imbalance in bargaining power where a "contract of adhesion" is a "take it or leave it proposition." See Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 855-862 (1964); Ehrenzweig, "Adhesion Contracts in the Conflict of Laws," Colum. L. Rev. 1072 (1953); Kessler, "Contracts of Adhesion — Some Thoughts About Freedom of Contract," 43 Colum. L. Rev. 629 (1943); Llewellyn, "Book Review," 52 Harv. L. Rev. 700 (1939); cf. *Siegelman v. Cunard White Star, Ltd.*, 221 F. 2d 189, 204-06 (2d Cir. 1955) (Frank, J. dissenting). Furthermore, the drafting party is responsible for any ambiguity in the document. *Rentaways, Inc. v. O'Neill Milk Cream Co.*, 308 N.Y. 342, 126 NE 2d 271 (1955); *Bay State Smelting Co. v. Ferric Indus., Inc.*, 292 F. 2d 96 (1st Cir. 1961) discussed in Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 & n. 83 (1964). ". . . If there is any doubt as to the meaning of the terms employed, the (party presenting the language) is responsible for it as the language is wholly (his) own . . ." *Gillet v. Bank of America*, 169 N.Y. 549, 554, 55 N.E. 292, 293 (1899).

Where one party has counsel and the other does not, special care is also exercised by the courts to protect the latter party. See *Ryon v. John Wanamaker, New York, Inc.*, 116 Misc. 91, 190 N.Y. Supp. 260 (Sup. Ct. 1921), aff'd, 212 App. Div. 848, 194 N.Y. Supp. 977 (2d Dep't 1922), aff'd, 236 N.Y. 515, 139 N.E. 728 (1923); *In re Vaupel's Estate*, 37 N.Y. Supp. 2d 853, 856 (Surr. Ct. 1942), aff'd, 266

ambiguous to some degree. Cf. Dickerson, "Statutory Interpretation: Core Meaning and Marginal Uncertainty," 29 Mo. L. Rev. 1 (1964).

Few documents are absolutely clear in their application to particular facts not yet in existence when the document was drawn. Cf. Curtis, "A Better Theory of Legal Interpretation," in Jurisprudence in Action 131-170 (N.Y.C.B.A. 1953); Jones, "Statutory Doubts and Legislative Intention," 40 Colum. L. Rev. 957 (1940). Further, "The same words, in different settings, may not mean the same thing." *Shelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 678 (1950); cf. *R.H. Johnson & Co. v. SEC*, 198 F. 2d 690, 696 (2d Cir.), cert. denied, 344 U.S. 855 (1952).

The Sullivan Act (General Obligations Law Sec. 5-701[b]) is, of course, relevant to consideration of the common law principle which it recognizes even where the statute in terms does not apply. E.g., *Comm'r v. LeBue*, 351 U.S. 243, 249 (1956); *United States v. Hutcheson*, 312 U.S. 219, 234, 35 (1941); *Electrolux Corp. v. Val-Worth, Inc.*, 6 NY 2d 555, 563, 161 NE 2d 197, 204, 190 N.Y. Supp. 2d 977, 987 (1959); *Schuster v. City of New York*, 5 NY 2d 75, 85-86, 154 NE 2d 534, 540, 180 N.Y. Supp. 2d 265, 273-74 (1958); Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 12-18 (1936); Farnsworth, "Implied Warranties of Quality in Non-Sales Cases," 57 Colum. L. Rev. 653, 654 (1957); Comment, 59 Colum. L. Rev. 487, 494 (1959); cf. *Parker v. Brown*, 317 U.S. 341, 367 (1943); *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 773 (1945). Compare also Fuld, J. in *Zendman v. Harry Winston, Inc.*, 305 N.Y. 180, 185 n. 3, 111 NE 2d 871 (1953) (persuasiveness of UCC prior to adoption as reflecting modern thinking on commercial transactions). There is also an overlap between Sec. 5-701(b), and the concept of unconscionability (which, unlike Sec. 5-701(b) may be a defense).

Uniform Commercial Code Sec. 2-302. On Sec. 2-302 generally see *American Home Improvement, Inc. v. MacIver*, 201 A. 2d 886 (N.H. 1964), 78 Harv. L. Rev. 855 (1965). The official comment to this section states that ". . . the principle is one of the prevention of oppression and unfair surprise . . . " Cf. Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 & n. 83 (1964) and cases cited. Compare also *Williams v. Walker-Thomas Furn. Co.*, 350 F. 2d 445 (D.C. Cir. 1965).

create large unforeseen liabilities or losses to legitimate business. It should be noted that the "good faith" defense applies only to "penalties" (i.e. $50 statutory damages in any class action based thereon) and not to "actual damages sustained . . ." In order to show good faith, proof that a party had instructed its attorneys to simplify its documents and that changes were made where needed, or that an outside firm specializing in simplification of documents would be relevant. Cf. Siegel, supra. Dr. Rudolf Flesch has also developed a scale for establishing the readability of documents.

The burden of going forward with evidence of good faith would, of course, be on the party asserting the defense as the one having relevant information. Compare *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 225-26 (1939); *United States v. Costello*, 275 F. 2d 335, 358 (2d Cir. 1960), aff'd, 365 U.S. 265 (1961); 3 Wigmore, Evidence Sec. 1042 at p. 733 (3d ed. 1940). See also *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *United States v. Sahadi*, 202 F. 2d 565, 565 (2d Cir. 1951); *Dyson v. United States*, 253 F. 2d 635, 637 (9th Cir. 1959); *United States v. Walker Co.*, 152 F. 2d 612, 613-14 (3d Cir. 1945); *Haggerty v. United States*, 5 F. 2d 224, 225 (7th Cir. 1925).

Statute Not Exclusive

The statute in not making a violation a defense to an action to enforce or for breach of an agreement, does not, of course, affect the fact that violation of the underlying common law principle might constitute such a defense.

Where a statute creates a remedy, in addition to a common law remedy, for the protection of a right, but contains no language barring the common law remedy, it is not construed to have removed the common law remedy. See *Odom v. East Avenue Corp.*, 178 Misc. 363, 34 NYS 2d 312, 317 (Sup. Ct. 1942); aff'd, 264 App. Div. 955, 37 NYS 2d 491 (4th Dept. 1942); *Brewster v. J. and J. Rogers Co.*, 169 N.Y. 73, 80, 62 N.E. 161 (1901). In *Schuster v. City of New York* the court stated:

"The existence of section 1848 of the Penal Law does not defeat plaintiff's common law cause of action. On the contrary, it reflects a public policy that municipalities shall respond in damages to private citizens or their estates who have been injured and killed as a result of aiding in law enforcement. This statute contains no language barring plaintiff's common law remedy. The rule is that '[a] statute in the affirmative, without any negative expressed or additional remedy, for the enforcement of a right . . .' (McKinney's Cons. Laws of N.Y., Book 1, Statutes, Sec. 34).

"In other words, where a remedy existed at common law for the wrong or injury against which a remedial statute is directed, if such statute provides a more enlarged or a summary or more efficient remedy for the party aggrieved, but does not in terms or by necessary implication deprive him of the remedy which existed at common law, the statutory remedy is considered as merely cumulative, and the party injured may resort to either at his election."

5 NY 2d 75, 180 NYS 2d 265, 273, 154 NE 2d 534 (1958). See also *Norton v. the State of New York*, 53 Misc. 2d 495, 279 NYS 2d 309, 313 (Ct. of Claims, 1967); *Taylor v. Mayor, etc., of City of New York*, 82 N.Y. 11 (1880); *Seligman v. Friedlander*, 199 N.Y. 373, 92 N.E. 1047 (1910); *Lobell v. Galpin*, 225 App. Div. 65, 229 N.Y.S. 76, 79 (4th Dept. 1930); Pound, "Common Law and Legislation", 21 Harv. L. Rev. 383, 385-387 (1908); Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 13 (1936).

Counterclaim Provision

Furthermore, a claim for actual damages because one was subjected to adverse consequences by a contract that they did not comply with Sec. 5-701(b) can be asserted as a counterclaim in an action to enforce the contract or for its breach. This would not contravene the purpose of Sec. 5-701(c), which was to avoid the disproportionate result of cancelling an entire debt because certain provisions in the agreement were not written in plain English.

Persistent, deliberate and blatant violation of Sec. 5-701(b) might also constitute illegality justifying injunctive relief at the suit of the Attorney General under Executive Law Sec. 63(12), and subject to contempt penalties as set forth in Judiciary Law Sec. 751(4), added by L. 1975, ch. 410. Compare *State v. ITM*, 52 Misc. 2d 39, 275 NYS 2d 303 (1966); *People v. MacDonald*, 69 Misc. 2d 455, 330 NYS 2d 85 (1972).

One of the arguments raised in opposition to the Sullivan law was that certain provisions cannot be translated into ordinary English. Although non-understandable provisions can no longer be properly utilized in consumer contracts after June 1, 1978, a similar result can nevertheless be obtained by a creditor by substitute provisions, such as giving a consumer a pro rata refund, less a specific cancellation fee or cancellation percentage (compare General Business Law Sec. 412-a as amended by L. 1977 ch. 345).

thinking up unhappy contingencies nd sets about the careful legal overing of himself against each of hem, he has embarked upon a ourse which ends only with the incorporation of a fifteen volume encyclopedia of law and procedure, or lse with plain exhaustion." Llewelyn, "Meet Negotiable Instruments," 1 Colum. L. Rev. 290, 312 (1944).

In many cases, the courts or statutes can or will supply answers to ontingencies which cannot practicably be covered in contract anguage suitable for comprehension y the general public. Thus, a bank heck does not contain a description f all legal consequences which apply o various situations contemplated by the Negotiable Instruments Law r the Uniform Commercial Code. nstead, use of certain language utomatically triggers legal provisions deemed by the courts or the egislature to be fair to all parties. Compare the triggering of various onsequences by the use of the term "full" or "limited" warranty under he Magnuson-Moss Warranty Act, ublic Law 93-637 (1975), 88 Stat. 187, Section 101, 15 U.S.C. Sec. 2304. .Y. New York State Bar Association, Banking, Corporation and Business Law Section, Address from Fall Meeting, Oct. 9-12, 1975, Saratoga Springs, p. 11-14.

The section should not be considered to obliterate the common law principle out of which it grew, nor to limit that principle or its enforcement; it should be regarded as a supplemental remedy for certain types of disregard of that principle. The chief reason for the need for such a law, of course, is the absence of provable damages for many instances where non-understandable contracts are used. Section 5-701(b) sets up mechanisms for individual or class actions with a penalty of up to $50 per consumer and up to $10,000 in total as a mechanism for enforcement, subject to the "fail safe" principles discussed above. These "fail safe" provisions provide that no statutory minimum damages ("penalty") will be imposed except where good faith is lacking, and that a technical violation of Sec. 5-701(b) will not make an entire debt or contract unenforceable.

Of course, if the language of the "contract" was so obtuse that it was never agreed to in the true sense in the first place thus, as distinct from merely violating the statute as written would be a defense. Cf. *Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 NE 2d 389 (1940); *Jones v. Great No. Ry.*, 68 Mont. 231, 217 Pac. 673 (1932); compare also

Though the subjects discussed in article reflect the activities of Special Committee on Consumer ..., the views expressed are

similar consumer transactions, such as purely financial contracts subject to separate regulatory schemes like securities brokerage agreements or insurance contracts. See N.Y. Insurance Law, Art. VII, Sec. 140-160-b; General Business Law Art. 23, 23-A, 23-B, 23-C, Sec. 350-359-W; 15 U.S.C. ch. 2A, 2B, 2b-1, 2D, Sec. 77a-78aaa, 80a-1. While the separate regulation of these types of agreements obviously would not in and of itself negative the applicability of the Sullivan law, it should do do when combined with the traditional separateness of these areas from what are normally considered consumer transactions. Compare generally *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963); Note, 58 Colum. L. Rev. 673 (1958). On the other hand, consumer-type loans such as small loans or loans to buy consumer goods are obviously covered. As to the latter, compare Federal Trade Commission Trade Regulation Rule, Preservation of Buyer's Claims and Defenses, 16 C.F.R. Part 433, Federal Register May 14, 1976.

The law prohibits use of "technical" language in consumer contracts; the intention is obviously to prohibit technical language of a type understandable only to specialists. If language is technical and has the same ordinary meaning as its technical meaning, the law would obviously not prohibit its use. This is evident from the other terms with which the term "non-technical" is grouped. See *Third National Bank v. Impac Limited, Inc.*, 97 S. Ct. 2307, 2314 (6/17/77) citing *United States v. Feola*, 420 U.S. 671, 705 (Stewart, J. dissenting).

Mandated Language Permissible

Similarly where technical language is specifically mandated by state or Federal law, its use is obviously permissible because use of terms required by any other applicable binding state or Federal law or regulation would be a good defense to a charge of violation of the Sullivan law. In the case of a state requirement this would be because of the general principle that the more specific provision overrides the more general absent a contrary expression of intention. Compare *Silver v. New York Stock Exchange*, supra; Note, 58 Colum. L. Rev. 673 (1958). In the case of a Federal requirement, this would be so by virtue of the Supremacy Clause of the Federal Constitution. Specifically, in the case of the Truth in Lending Act and Regulation Z issued by the Federal Reserve Board, the purpose of the provisions involved is disclosure to the consumer — the objective which underlies the Sullivan law.

Consequently, compliance with disclosure requirements mandated by Truth in Lending or similar Federal laws is in accordance with the purpose of the Sullivan law and would not produce a violation of it, even apart from the Supremacy Clause. Of course, the purpose of the Sullivan law is not to regulate the disclosures required by the Truth in Lending Act, but other applicable provisions in consumer contracts.

fice.

It has been feared that the Sullivan law would cause chaos by applying to all sorts of situations where its objectives are not relevant. See Tyler, Letter to the Editor, "Sullivan Bill: A Sledgehammer Blow for Clarity," *N.Y. Times*, 5/5/77, p. A20. This will not be the case if the law is interpreted in accordance with its objectives, as it should be. The courts do not normally interpret statutes to reach absurd results contrary to the purpose of the legislation, nor should they here. The original version of the bill, A. 4538-A (2/23/77) covered only contracts subject to the disclosure provisions of the Truth in Lending Act (15 U.S.C. Section 1601); the amended version dropped that provision to avoid problems raised by incorporating by reference specific statutes subject to amendment by other legislative bodies, a matter raising state constitutional as well as practical problems.

The intent of the change was not to broaden coverage but to avoid such problems. The purpose of the bill was to avoid consumer entry into obligations not understood. Consequently where there is no future obligation placed on the consumer, the law should not apply. This is confirmed by the express provision barring recovery of statutory damages where the contract is fully performed by both sides (General Obligations Law Sec. 5-701(b), final unnumbered paragraph, as added).

Standard Forms

Similarly, the intent of the law is to apply to standard-form printed or reproduced contracts, not individually negotiated handwritten or similar agreements. Only the former normally contain sections to be captioned, as referred to by Sec. 5-701(b)(2) as added.

Likewise, warranty disclosure governed by Title I of the Magnuson-Moss Warranty — Federal Trade Commission Improvements Act, P.L. 93-637 (1975) and regulations thereunder would not seem to be affected or covered by Section 5-701(b).

To the extent that the Sullivan law is successful in improving the readability of consumer contracts, it will benefit both legitimate business and consumers, because businesses will be subjected to public irritation by the problem which the Sullivan law will help to eliminate. It will be up to the Bar and the business community to see that these forward-looking reforms are successful, and that any necessary clarifying amendments are agreed upon.

The approach of seeking an accommodation under which both consumers and business can benefit from a synthesis of interests can be discerned in other recent legislative action, such as the additional notice requirement in debt collection suits added by L. 1977, ch. 344, amending CPLR 308, effective Jan. 1, 1978, discussed in the July 28 Consumer Column in the *Law Journal*. This reform was supported by the collection Bar as well as consumer groups and law enforcement agencies. The same has been true of other major reforms such as the new state criminal antifraud statute, Penal Law 190.65 added in 1976 and the

January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the use of plain language in residential leases and consumer agreements. For too long people have been unnecessarily subjected to technical jargon and convoluted sentences often making the documents virtually incomprehensible.

This bill would require the use of clearly written, non-technical language and a clear sequence and labeling of the sections of those leases and agreements. The bill would not apply to leases and agreements involving amounts in excess of $50,000.

The bill does not conflict with existing substantive law. It addresses form only, and its purpose is to render consumer agreements more easily understandable. This bill is based on ch. 747 of the Laws of New York 1977. As in the New York law, the enforcement mechanism is written to avoid disruption of commerce but to provide double damages plus $50 when a party to such an agreement is in fact injured and the agreement was written in violation of these requirements.

The effective date of this bill is January 1, 1979 so that persons affected by these new requirements will have time to revise their leases and agreements.

Sincerely,

S/JSH

Jay S. Hammond
Governor

IV. DATE December 7, 1977 PREPARED BY Richard J. Peques, Admin. Officer
Department of Law

Installment Purchase

Introduced: 1/10/78
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 592

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use of plain language in contracts and leases; and providing for an effective date."

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

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. CONSUMER AGREEMENTS.

Sec. 45.45.250. FORM. (a) Subject to (b) of this section, every written agreement entered into after January 1, 1979 for the lease of space to be occupied for residential purposes, and every written agreement to which a consumer is a party and the money, property, or service which is the subject of the transaction is primarily for personal, family, or household purposes, must be:

(1) written in non-technical language and in a clear and coherent manner using words with common and everyday meanings;

(2) appropriately divided and captioned by its various sections.

(b) This section does not apply to agreements involving amounts in excess of $50,000. or to agreements ~~that~~ the forms of which are regulated by other provisions of Alaska Law.

(c) A creditor, seller, or lessor who fails to comply with (a) of this section is liable to a consumer who is a party to a written agreement governed by (a) in an amount equal to the sum of any actual damages sustained plus $50. The total class action penalty against any such creditor, seller, or lessor may not exceed $10,000. These penalties may be enforced only in a court of competent jurisdiction,

but not after both parties to the agreement have fully performed their obligation under the agreement, nor against any creditor, seller, or lessor who attempts in good faith to comply with this section.

(d) A violation of (a) of this section does not render an agreement void or voidable nor does it constitute:

(1) a defense to any action or proceeding to enforce the agreement; or

(2) a defense to any action or proceeding for breach of the agreement.

* Sec. 2. This Act takes effect on January 1, 1979. (1 year)

Amend 21.~~[illegible]~~42.130

(5) – ~~should be readable~~ does not meet the standards for readability established by the director

Mike Thomas

STATE OF ALASKA

Inter-Department Route Slip

Rm 124

TO:
MAIL STATION NUMBER_____

~~DEPARTMENT~~ House Judiciary Com.

ATTENTION Terry Gardiner

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return As Requested
- ☐ Return For Approval
- ☐ Necessary Action
- ☒ Your Information

Remarks:

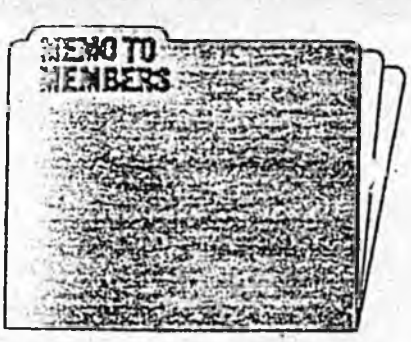
Re HB 592.

FROM:
MAIL STATION NUMBER_____

DEPARTMENT Law

BY Art Peterson DATE 5/9/78

02-002 (REV.10/73)



READ A CONTRACT BEFORE YOU SIGN IT. No bit of advice is more basic than that—and, often, no advice is more futile. For the standard language of contracts is not standard English. It's frequently a legal gobbledygook handed down from one generation of lawyers to the next. Puzzling or confusing jargon leaves consumers unsure about their rights and obligations under a contract.

But help is on the way.

In New York last year, a bill passed by the Legislature requires residential leases and certain consumer contracts to be written in words of common and everyday meaning. Other states appear to be in no hurry to follow New York, and there's a move afoot in New York to delay or repeal the law. (Or, as a New York Times headline-writer put it, tongue firmly in cheek: "Plain-Language Law Facing Amendatory Relegislative Proceeding.")

But even without state laws, the lot of the contract-signer has been improving. Years ago Herbert Denenberg, then Pennsylvania's Commissioner of Insurance, pioneered in requiring understandable insurance forms. Now Citibank, one of the largest banks in the country, has begun to replace legal jargon with plain English in its consumer loan agreements.

Other organizations are returning to the mother tongue. The Blue Cross Association has announced that South Carolina Blue Cross and Blue Shield has rewritten all 33 of its standard nongroup policies and group booklets into nontechnical language; that Virginia "blue" plans have rewritten some policies in plain English; and that other plans are reviewing their contracts for possible rewriting. The National Bank of Washington, D.C., has put out a consumer loan form in everyday English—and even pretested it for comprehension. Chemical Bank in New York has rewritten its Master Charge Card agreement in simple English.

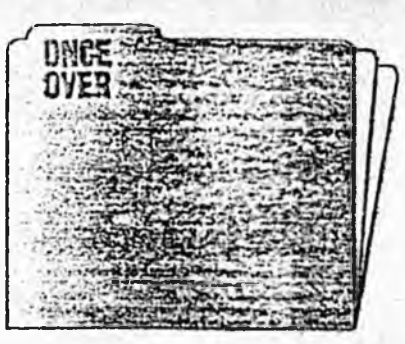
The Insurance Services Organization, an industry group with about 1600 affiliated companies, has developed a plain-English homeowners policy for insurance companies. These are now available in several states. So is a simplified auto-insurance form.

Other insurance companies are making similar changes in their forms.

The Federal Government is helping, too. President Carter has issued an order requiring that executive department regulations be written simply and clearly. The Employee Retirement Income Security Act (ERISA) requires that covered plans be described "in a manner calculated to be understood by the average plan participant." The Magnuson-Moss Warranty Act requires that consumer warranties be written in "simple and readily understood language."

Consumers surely have a right to understand what they're asked to sign. But don't confuse an *understandable* contract with a *fair* contract. While it's fine to understand the terms of leases, insurance policies, and loan agreements, it would be better still if consumers had an opportunity to negotiate those terms as well. If simplified contract language helps consumers see how one-sided some form contracts are, they can press for changes in meaning as well as in language.

—Rhoda H. Karpatkin, *Executive Director*



DOES A FRUIT-RIPENING BOWL REALLY DO IT BETTER?

Most fruit is picked before it is ripe, so it will survive the rigors of shipment. Much of it is still unripe when you get it home. What's the best way to ripen the fruit? One way is to simply put it in an open bowl. Another way is to store it in a perforated plastic bag (you can punch the holes with a fork).

Still another way is to keep the fruit in one of the clear plastic fruit-ripening bowls that recently came on the market. These vented, pear-shaped affairs (see photo) are supposed to ripen fruit quickly yet preserve its juiciness and flavor. Do they do the trick better than the plastic bag or the ordinary bowl?

To find out, we bought samples of two fruit-ripening bowls—the *California Summer Fruits Ripening Bowl* (California Tree Fruit Agreement, Sacramento), which sells in supermarkets for about $5, and the *RipenRight Fruit Bowl* (Blue Anchor Inc., Sacramento), which, at the time CU purchased samples, was available by mail for $10. Despite the sizable price difference, the two bowls are almost identical.

The fruit-ripening bowls are supposed to provide a special environment to aid the ripening. After fruit is picked, it continues to "breathe," taking in oxygen and giving off carbon dioxide, water vapor, and ethylene gas. The fruit-ripening bowls retain some of the water vapor and ethylene gas the fruit needs to ripen, and allow some of the carbon dioxide to escape through their vents. (A perforated plastic bag provides a similar semiclosed environment.)

We tested the new bowls against an open bowl and against perforated plastic bags, using a variety of unripe fruits. All the tests were conducted at room

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 6, 1978

TO: Rep. Terry Gardiner, chairman

FROM: Bob Speed, A.A.

RE: "Son of Sam" statute, CS SB 488
An act requiring money received by criminals as a result of the commission of a crime to be available to victims of that crime

Sen. Ziegler briefed me on CSSB 488, which passed the Senate this date by a vote of 18-0. It is patterned after New York's "Son of Sam" statute.

The bill is intended to keep perpetrators of crimes from profiting financially by selling accounts of their lives or their criminal activities to news media, movies or for other uses.

Proceeds and royalties from publication rights or other money accruing to the perpetrator from similar sources would go to the Violent Crimes Compensation Board for deposit in an escrow account. The board would make as much money available to the defendant as needed for legal expenses, including appeals. Any remaining money would go to the victim of the crime or the victim's family.

The CS transfers the Violent Crimes Compensation Board from the Department of Health and Social Services to the Department of Public Safety. Sen. Ziegler said this was done because the board did not have access to confidential DPS files and information, to which they will have access as an arm of Public Safety. Commissioners Beirne and Burton have endorsed this transfer.

The CS also deletes a section of the original bill which would have required publication in newspapers of general circulation that money from this source is available to victims of violent crimes. Sen. Ziegler said it was felt that this requirement is not needed in Alaska because the state is not burdened with the large population which would be affected in New York or other states.

HB
594

HB 594

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN, MAYOR

MUNICIPAL HEALTH COMMISSION

April 28, 1978

Joseph McKinnon, Chairman
House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. McKinnon:

The Municipal Health Commission has reviewed and made a recommendation on HB 594 that is presently in your committee.

The Municipal Health Commission is a 33 member, community based group of concerned citizens. The Commissic - iews community health issues, grants, problems, and legislation and makes , mmendations to the Municipal, State and Federal governments and legislative bodies, the general public, and the Regional Health Systems Agency. The Commission membership must meet rigid legal requirements that assure broad demographic and occupational representation as well as a consumer majority.

Attached is the review and recommendation on HB 594 as approved by the Municipal Health Commission on April 26, 1978. We hope that your committee will consider our review and recommendation before making a decision on this bill.

Thank you very much.

Sincerely,

Charles Rigden

Charles Rigden, Chairman
Municipal Health Commission

Attachment

LEGISLATIVE REVIEW & RECOMMENDATIONS
OF THE MUNICIPAL HEALTH COMMISSION

1. BILL NUMBER AND TOPIC: House Bill 594 - No Fault Motor Vehicle Insurance.

2. WHAT IS THE CURRENT STATUS OF THE BILL? Presently in House Commerce with an additional referral to House Judiciary.
WHAT IS THE TIME FRAME FOR INFLUENCING THE BILL'S OUTCOME BY THIS COMMITTEE OR COMMISSION? This legislative session.

3. WHAT DOES THE BILL DO? Provides for personal protection insurance benefits without regard to fault in a motor vehicle accident and requires personal protection coverage for those operating a motor vehicle in Alaska.

4. WHO DOES IT AFFECT? People operating a motor vehicle in the State of Alaska.

5. HOW MUCH DOES IT COST? Unknown.

6. IS IT DIRECTED TO A SPECIFIC GEOGRAPHIC AREA? No.

7. IT IS DIRECTED TO A SPECIFIC GROUP? Yes.
WHO? People operating a motor vehicle in the State of Alaska.

8. WHAT ARE ITS STRENGTHS? 1) Reduces court hearing costs by reduction in number of litigations, 2) May reduce cost of motor vehicle insurance, 3) Is a more efficient way of dealing with insurance.

9. WHAT ARE ITS DRAWBACKS, WEAKNESSES? Enforcement - need monitoring devices to assure compliance with the required personal protection insurance coverage i.e. require proof of insurance when registering a motor vehicle and police checking insurance status when other violation citations are written.

10. IS THE IDEA NEW? No.
ARE THERE PRECEDENTS? No.

11. HOW WOULD THIS BILL AFFECT THE ANCHORAGE HEALTH SERVICES PLAN? Would strengthen the plan by resulting in fewer people receiving medical care from public funds due to injuries incurred in a motor vehicle accident.

12. WHAT IS THE COMMITTEE'S RECOMMENDATION? That HB 594 become law with the condition that the Motor Vehicle Division develop mechanisms for enforcement of the required personal protection insurance coverage.

HB
615

Oxford Pendaflex
STOCK No. 753 1/3
MADE IN U.S.A.

(1) What will happen when you clamp down on profits?

20% Surplus lines - can't regulate rates
of total fire Ins in state

10% (2) Are we dependent on the agressiveness of Direct
Why are rates to high

SOUTHEASTERN ALASKA
COMMUNITY
ACTION PROGRAM

JUNEAU CENTER
P.O. BOX 449
JUNEAU, ALASKA 99801
PHONE 907 586-1990

Where is the bill
(H) Commerce's-amended Commerce
Are they aware of this problem?
Rm H-Judiciary

March 14, 1978

Honorable Terry Gardiner
House of Representive
Pouch V.
Juneau, Alaska 99811

Dear Representive Gardiner:

Last week I became aware of the Committee Substitute for House Bill 615 that proposes the arrangement of an "insurance pool" in order to reduce the cost of property insurance for communities in Alaska. This sounds like it could have a very significant impact in Southeastern Alaska, especially in the smaller communities

The quality of fire protection and the high rate of fire insurance have been perennial concerns among our Board of Directors. SEACAP has passed numerous resolutions dealing with fire fighting training, organizing Volunteer Fire Departments and the need for specialized equipment. Local municipalities have been using their revenue sharing funds to upgrade their fire fighting abilities. Tlingit and Haida Central Council assists villages in submitting Community Block Grants for major fire fighting Structures. These measures not only raise the degree of fire safety present in the rural areas but will tend to lower the fire insurance rates.

The problem with CSHB 615 is that its "area of operation" is essentially areas "west of the 141st meridian." This summarily excludes all of Southeast Alaska! did change that - "pool operates statewide"
* Dir of Insurance - determine availability problem.

During the last two days SEACAP has tried to reach our Board Members representing 19 communities in this Region. The Mayors of Klawock, Kake, Craig, Hydaburg, and Hoonah - all reconfirmed that fire insurance there is difficult to get. Petersburg and Klukwan also reported high rates.

I recall that Yakutat had a hard time trying to renovate the fire-damaged ANB Hall because no insurance benefits were available - the Hall was not insured.

In checking with Tlingit and Haida Central Council's Division of Economic and Social Development, they confirmed the lack of adequate fire protection and high cost of insurance in Southeastern communities. They added that according to their latest OEDP Reports that Kasaan has no fire protection or insurance and Angoon like many of the other communities, has the costliest rating (10) on insurance scales.

In summary, let me say that providing for sufficient Fire protection in Southeastern Alaska is something that the local governments are continually striving for and as fire departments are upgraded, hopefully rates of insurance will decrease. At present, that is not the case and therefore any Legislative Act designed to equitably apportion the net loss of operating an insurance pool to reduce the cost of fire insurance receives our whole-hearted endorsement as long as it realistically covers all regions of the State.

With this in mind, SEACAP strongly urges that an Amendment be made to CSHB 615, Section 21.61.025, which would delete the exclusionary clause and provide for the specific inclusion of Southeastern Alaska.

Sincerely,

James A. Wilson

James Axel Wilson
Acting Executive Director

Rural Property Insurance

Prepared By The Interim Insurance Committee
For The Legislative Council

January, 1978

RURAL PROPERTY INSURANCE IN ALASKA

A Report prepared by the

Interim Insurance Committee

for the Legislative Council

January 1978

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I. SUMMARY OF THE PROBLEM

This report examines the apparent non-availability of rural dwelling insurance in the normal market. From conversation with the Director of Insurance, company representatives, and agents and brokers, it has been determined that the majority of rural dwelling insurance is written by surplus line companies. These surplus line companies are unregulated, and primarily provide insurance to high risk exposures who cannot be placed with a licensed insurer. The surplus line carriers routinely surcharge rural dwelling policies 175% to 300% of standard bureau rates.[1] Evidence indicates that the majority of these are surcharged at 300% and that this is excessive.

The standard companies major complaint against writing bush dwelling insurance is that the rate is inadequate due to:

1) High Replacement Costs
2) High Cost of Adjusting Claims
3) Lack of Uniform Building Codes
4) Lack of Adequate Fire Protection

These complaints are legitimate to the extent that the cost of insuring rural dwellings may be higher than the cost of insuring urban dwellings. However, there are indications that

the overall rate level of standard companies is excessive and that the surcharge levied by the surplus line carriers is also excessive.

Table 1 shows the total premium volume for admitted and surplus carriers operating within Alaska. The data indicates that over the past five years the surplus line companies have been writing an increasing share of the Alaska fire insurance market. Between 1972 and 1976 there has been a 450% increase in the volume written by the surplus line carriers. In fact, by 1976 the surplus carriers enjoyed nearly one-third of the total fire insurance market. This increase indicates a tightening of the market and the increasing non-availability of fire insurance from admitted carriers.

TABLE 1.[2]

Alaska Fire Insurance Written Premiums

	Total (Admitted & Surplus)	Surplus	Surplus as % of Total
1972	$ 8,817,563	$ 976,882	11.1
1973	8,521,343	648,959	7.6
1974	9,523,474	965,537	10.1
1975	10,639,320	2,865,449	26.9
1976	13,796,608	4,522,476	32.8
Totals	$51,298,308	$9,979,306	19.5

Insurance Report 1972-76, 1/21/77, R. Rainery.

Table 2 summarizes dwelling fire insurance premiums for companies reporting to the Insurance Services Office (I.S.O.). The I.S.O. is the main statistical rating bureau for property

and casualty lines in Alaska. Table 2 represents over 90% of the total market as most companies subscribe to I.S.O. fire rates. For the five years shown, dwelling fire insurance has been very profitable. The balance point loss ratio for fire insurance is 56%.[3] This means that a company can have a loss ratio of 56% and still maintain an underwriting profit. Table 2 shows that for policies written in areas with some fire protection (protection class 1-8), companies have maintained a 21.6% profit margin, and a 36.5% profit margin in areas with no fire protection (protection class 9 and 10). Normally, companies calculate rates based on a 6% profit margin.

TABLE 2.[4]

ISO Dwelling Experience Compilation - Protection
Standard Fire Policy

	Protected (Classes 1-8)			Unprotected (Classes 9&10)		
	Earned Premiums	Incurred Losses	Loss Ratio	Earned Premiums	Incurred Losses	Loss Ratio
1971	474,991	289,125	60.9	508,446	168,957	33.2
1972	456,014	205,009	45.0	526,474	170,967	32.5
1973	448,655	166,816	37.2	506,598	96,752	19.1
1974	510,136	197,089	38.6	587,118	84,009	14.3
1975	667,871	175,513	26.3	647,324	186,553	28.8
	2,557,667	1,033,552	40.4	2,775,960	707,238	25.5

ISO 1976 Statistical Report, Personal Lines

Table 3 shows the relativities for different protection classes. Relativities adjust the premium either up or down in relation to a base premium. Here the base premium is figured for protection class five. The current relativities, that is those

currently being charged, show that an insured with a dwelling in protection class 3 pays approximately 77% of what a person with a dwelling in an area of protection class 5 pays. For a person in protection class 10, the price for insurance is approximately 265% of that for protection class 5. The indicated relativities are the relativities based on the actual experience. This means that the rates for protection class 3 should be 7.9% higher than for protection class 5. The rates for protection class 10 should be 34.8% higher, rather than 165% higher than the base rate for protection class 5.

TABLE 3.[5]

ISO Premium Relativities - Dwelling Fire - Frame Bldg

Protection Class	Statewide Current Relativities	Statewide Indicated Relativities
3	.773	1.079
4	.884	1.000
5	1.000	1.000
6	1.155	1.000
7	1.542	.836
8	1.956	.836
9	2.447	1.195
10	2.654	1.348

ISO Fire filing of June 7, 1977

It is difficult to draw any concrete conclusions from this data, but the evidence indicates:

* There is an increasing problem of fire insurance availability within the normal market.
* The standard rates currently being charged are excessive.
* The surcharges levied by the surplus line companies are excessive.

II. INTRODUCTION TO THE PROPOSALS

The Interim Committee on Insurance has developed three possible solutions to this problem. These are:

* Open Competitive Rating
* Establishment of a Rural Rating Territory
* FAIR Plans and the Development of a Rural Property Insurance Pool

The first proposal, open competitive rating, allows for prompt adjustment of the rate by the insurance companies. The concept of open rating is tied to insurance regulation, and the fact that Alaska is a prior approval state. Prior approval means that the insurer must submit an annual rate filing for each line of insurance, and that filing must be approved by the Director of Insurance. The insurance industry argues that prior approval has introduced rigidities into the market and increased the availability problems for certain lines of insurance. The industry further maintains that if they were allowed to adjust their rates to reflect underwriting results as they occurred, this would increase their willingness to write policies for marginal risks. This report briefly summarizes the affect that open competition has had on price and

availability for auto and property insurance in New York. The conclusions were:

* Competitive rating did not substantially influence the price of insurance, as price remains a function of underwriting results and company operating expense.

* Competitive rating did have a favorable impact on the population of New York's FAIR plan, and resulted in more of those risks being insured in the standard market.

* Competitive rating allowed a greater range of rates by lessening the adherence to bureau rates of most the companies writing insurance in the state.[6]

The second proposal calls for the establishment of a rural rating territory. Currently the Insurance Services Office has divided the state into two rating territories. These are Southeast Alaska and the rest of the state.[7] The committee has proposed that the ISO create a third rating territory, rural unprotected Alaska. The present situation results in the same rate being charged for property insurance in Dillingham as in Anchorage. The effect is that standard insurers will not write property insurance in Dillingham or any of rural Alaska. The creation of a third rating territory would allow for the eventual development of a non-discriminatory adequate bush rate and avoid the problem of creating a subsidy between urban and rural Alaska.

The third proposal is the development of a rural property insurance pool. The pool has been based on the concept of a FAIR plan. FAIR plans are a type of residual market mechanism

which operate in much the same fashion as an assigned risk pool. If a homeowner is unable to obtain insurance from a standard insurer he may apply to the pool. If the dwelling meets the underwriting criteria set forth by regulation, the dwelling would be insured by the pool. There is one basic difference between FAIR plans and assigned risk pools. In an assigned risk pool, each risk is assigned to a particular insurer. With the FAIR plan, the total experience of the pool is distributed between all the insurers operating within the state, based on the percentage of the market which they write for that particular lien. Although the rural property insurance pool is similar to a FAIR plan, the committee has made some significant changes. These are:

* The pool will not be associated with the Urban Property Protection and Reinsurance Act of 1968, an act which all FAIR plans are subject to.
* The pool will be self-rating.
* The pool will only operate in a specific geographic area namely the rural rating territory.

A fourth alternative is being considered by the committee and this is the formation of a bush mutual, however it has not been included in the body of this report. A bush mutual would involve incorporation of groups or entities for the purpose of writing insurance policies. The mutual would have to be allowed to begin writing insurance policies with an amount of surplus which is below that normally required of an authorized mutual insurer. Initial capitalization would be provided by payment

on the policies and a fee assessed based on the amount of the policy. The fee would be refunded or credited to a policy after the mutual achieved financial stability.

Legislation has been drafted, or is being drafted for the open competitive rating law, the rural property insurance pool, and the bush mutual. A Resolution was drafted directing the Director of Insurance to disapprove any rate filing which did not incorporate a rural rating territory which provided for a non-excessive bush rate.

A. Open Competitive Rating Law

Introduction

Rate regulation has been the focus of increased attention by both insurers and regulators. The issue dates back to the McCarran Fergurson Act which essentially exempted the insurance industry from the Federal anti-trust laws. After passage of the McCarran Fergurson Act, virtually all states began to regulate insurance rates. The laws varied from state to state, but many were based on a model bill drafted by the NAIC. This bill allowed the use of rating bureaus, and said rates were to be regulated so that they are neither, "Excessive, inadequate, or unfairly discriminatory."[8] However, the bill also said that membership in a rate bureau is not mandatory, and those companies that are bureau members may even apply for deviations from bureau rates.

At the time of passage of the McCarran Fergurson Act, the insurance industry was strongly in favor of exemption from the anti-trust laws. In fact, this exemption was absolutely necessary if the industry was to continue the operation of assigned risk pools, and other pooling arrangements where it is necessary to fix a rate. The correlary to exemption from the Federal anti-trust was rigid state regulation. The industry maintains

this has caused certain irregularities and rigidities in the market, and increased the availability problems with certain types of insurance.[9] According to the insurance industry, the end result has been a situation where a risk which is slightly worse than average often receives a much worse rate through a residual market plan such as an assigned risk pool.[10]

Alaska is a "prior approval" state. This means that companies writing in the state must submit annual rate filings to the Division of Insurance, and must then be approved by the Director. If the Director deems a rate filing excessive, the company must re-submit the filing. It must be approved before the company implements the proposed rate change. Companies may file separately or subscribe to a rating bureau.

Prior approval is the most stringent type of state regulation. Industry maintains that prior approval has hampered their efforts to effectively market insurance by not allowing the companies to promptly adjust their rates. Generally, a company will reevaluate rates being charged for a particular line and find that it is either too high or too low. In either case, under prior approval, the company must wait until the end of the rate filing period to adjust the rate. The affect is that if the rate is excessive the company may be undercut by another company who has filed for a lesser rate. If the rate is too low the company will restrict its underwriting to curb losses, thus aggravating the problem of availability.

The issue becomes a problem for rural Alaska in that most standard companies have simply excluded this particular segment of the market. Companies feel the rate is inadequate. As pointed out in the introduction, this may not be the case. With open competition allowing companies to more promptly adjust rates, it is possible that the availability problem may be eased in the standard market. However, underwriting considerations such as the lack of fire protection and uniform building codes, also are key factors in the reluctance of insurers to write rural dwelling insurance. These factors may be of such significance that rural dwellings may be excluded no matter what type of rating law is used.

Open Rating in New York

In 1970, New York, at the recommendation of the Insurance Department, passed a competitive rating law. The law replaced the prior approval law which previously had been in affect. The competitive law:

* Required that insurance rates shall not be excessive, inadequate, or unfairly discriminatory, continuing the statutory price standards that existed under prior approval;

* Made it illegal for insurance companies to set rates in concert and prohibited other forms of anti-competitive behavior with prohibitions and penalties paralleling the Federal anti-trust laws;

* Eliminated the need for the Insurance Department to approve rates in advance of their use in the marketplace;

* Provided for continuous monitoring of competition and for the reimposition of prior approval where competition was deemed inadequate to restrain excessive prices, or where

destructive competition resulted in price wars and insolvencies.[11]

Open competition was expected to influence both the price and availability of insurance. Price is basically a function of underwriting losses, company expenses, and profit. Although open competition was not expected to affect underwriting losses a long term beneficial impact on price was anticipated through the encouragement of independent pricing, thereby providing market incentives to hold down the expenses and profits. In the short run it was expected that open competition would allow for more responsiveness in adjusting rates and a wider range of rates thus increasing the availability.

Price:

Figure 2.1 shows the percentage change in the cost of automobile liability coverage during the period of prior approval, open competition, and the return to prior approval with the enactment of no-fault. The changes are compared with the changes in the New York consumer price index, the change in weekly wage for New York production workers and New York medical cost index.

The figures shown in Figure 2.1 superficially suggest that open competition has kept the price of auto liability coverage down as there was an annual increase of only 2.1% during the four

years of open competition. This is far below the 18% recorded with the return to prior approval and the passage of no-fault. What the figures do not show is that the return to prior approval coincided with a drastic deterioration in underwriting results, and a temporary rate freeze. The rate freeze produced a price backlash which further escalated cost. When the rate increase under the four years of open competition (1970-1973) are averaged with the three years of the transitional prior approval (1974-1976), the average annual rate increase is 8.3%. During the same period, the period the Consumer Price Index rose 7.1%, the average weekly earnings rose 8.4%, and the medical costs rose 8.7%. These are all comparable to the 8.3% recorded for auto insurance. It can be concluded that in the long run the major effect on costs was primarily due to inflation and underwriting results, and not on the type of rating law which happened to be in effect.

FIGURE 2.1
PERCENT CHANGES IN AUTOMOBILE LIABILITY (BI & PD)[12]
INSURANCE RATE LEVELS AND OTHER INDEXES
1967-1976

	Automobile Liability (BI & PD) Rate Level	N.Y. Metropolitan Area Consumer Price Index[a]	Average Weekly Earnings of Production Workers in Mfg. N.Y. State[a]	N.Y. Metropolitan Area Medical Costs Index[b]
Prior Approval Jan. 1967-Dec.1969 (3 years)	+6.7%	+5.5%	+5.6%	+7.7%
Competitive Pricing Jan. 1970-Dec.1973 (4 years).....	+1.1	+6.9	+7.5	+6.1
Transitional Prior Approval Feb. 1974-Dec. 1976 (3 years).....	+18.0	+7.4	+9.7	+12.1

FIGURE 2.2
PERCENT CHANGES IN HOMEOWNERS INSURANCE[13]
RATE LEVELS AND OTHER INDEXES
1967-1976

Year	Homeowners Insurance Rate Level	N.Y. Metropolitan Consumer Price Index[a]	Residential Construction Cost Index[b]
Prior Approval			
Jan. 1967-Dec. 1969 (3 years).....	+9.7%	+5.5%	+7.8%
Open Competition			
Jan. 1970-Dec. 1976 (7 years).....	+1.2	+8.0	+10.7

Figure 2.2 shows the average annual rate increases for homeowners insurance, both under open competition and prior approval. Under prior approval, the annual rate increase averaged 9.7%. With open competition the average annual rate increase was 1.2%, well below that recorded during prior approval. However, as in the case with automobile liability insurance, the moderate rate changes during the seven years of competitive pricing can be attributed to favorable underwriting results for this line and not to the type of rating law which was in effect.

Availability:

As mentioned, open competition was expected to increase availability by allowing for prompter adjustment of the rate and a wider range of rates. To some degree, availability can be gauged by changes of population in the residual market. Residual markets are groups of sub-standard risks which cannot

find insurance from standard insurers. In most states insurers have formed pools which set a rate for these risks to insure the availability of insurance. Often times these pools were the result of legislative action. The most common examples are the assigned risk auto plans, and FAIR plans. This is a particularly pertinent point, as the rural housing market in Alaska is basically a residual market. This particular market segment falls outside of the rates filed by the majority of the standard insurers operating within the state.

Figure 2.3 shows populations trends of the assigned risk auto plan in New York. The plan shows an increase up to 1972 and then begins to decrease both during the period of competitive rating and the return to prior approval. It is difficult to draw any conclusions from this data because of two events which occurred during this time period. First, in 1969, coverage was expanded under the assigned risk auto plan, making the purchase of insurance from the plan more attractive. Second, these events affected the population of the assigned risk pool so it was difficult to ascertain the affect of open competition.

FIGURE 2.3
AUTOMOBILE ASSIGNED RISK PREMIUMS AS PERCENT[14]
OF TOTAL AUTOMOBILE PREMIUMS WRITTEN IN
NEW YORK STATE[a]

(in thousands)

Year	Total Automobile Premiums	Voluntary Market Premiums[b]	Assigned Risks Premiums[c]	Assigned Risks As Percent of Total
1970	$,474,242	$1,337,853	$136,389	9.25
1971	1,666,849	1,451,877	214,972	12.90
1972	1,693,905	1,471,672	222,233	13.12
1973	1,700,542	1,520,200	180,342	10.60
1974	1,592,806	1,471,242	121,564	7.63
1975	1,708,757	1,570,948	137,809	8.06

a Includes Liability (BI and PD) and Physical Damage.
b Includes voluntary private passenger and commercial coverages.
c Includes private passenger business only.

A clearer indication of the affect of open competition on availability can be gained from analyzing the affect on fire insurance. As figure 2.4 shows, the fire insurance pool shows a clear depopulation trend, declining 62% in premiums written between 1971 and 1975. This is a positive indication that open competition in New York has increased the willingness of insurers to write insurance for risks which had previously been included in the residual market. The favorable trend in homeowner and fire insurance took place during a period of moderate increases in loss ratios for these lines. Although there was a slight decrease in profitability for these lines, this did not increase the selectivity of underwriting.

FIGURE 2.4
NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION[15]
1970-May 1976

Fiscal Year Ended November 30	Policies Written	Premiums Written[a] (in thousands
1970	154,125	$114,233
1971	182,937	119,313
1972	203,214	91,301
1973	147,882	60,263
1974	124,529	49,300
1975	117,357	45,455
12/1/74-5/31/75	-	25,361
12/1/75-5/31/76	-	24,403

[a] Adjusted on the basis of rates effective September 1, 1975.

One final effect of an open competition rating law is to decrease the adherence of insurance companies to bureau rates. In the case of fire insurance in Alaska, over 90% of the market is written at bureau rates with no deviations. What this does is narrow the range of rates, and may exacerbate the availability problem. If a company feels this rate is inadequate for a particular market segment, they will simply not write it.

Figure 2.5 shows the effect of open competition on companies' dependence on bureau rates. As the figures show, rating bureau dominance in the insurance industry has all but ended.

FIGURE 2.5

ADHERENCE TO BUREAU RATES - TOP 30 COMPANIES[16]

	Number of Top 30 Companies Writing at Bureau Rates		Percent of Market of Top 30 Companies Written at Bureau Rates	
	1969	1976	1969	1976
Auto Liability.....	24	1	62.7	3.8
Auto Physical Damage.....	21	1	53.0	1.1
Homeowners.....	24	0	75.3	0.0

In conclusion, the effects of open competition in New York can be summarized as:

* Competitive rating did not substantially influence the price of insurance, as price remained a function of underwriting results and company operating expense.

* Competitive rating did have a favorable impact on the population of New York's FAIR plan, and resulted in more of those risks being insured in the standard market.

* Competitive rating allowed a greater range of rates by lessening the adherence to bureau rates of most the companies writing insurance in the state.

B. Formation of a Rural Rating Territory

Introduction

A key concept in the availability of standard fire insurance in rural Alaska is that of rating territories. Rating territories provide geographical subdivisions by which experience can be segregated, allowing for the derivation of a non-discriminatory rate. Location is often a consideration in rating overall experience for a particular line. For example, underwriting results for automobile liability coverage are often worse in the large cities than in rural areas.

The ISO has divided Alaska into two rating territories, the dividing line being the 141st meridian. Territory 01 covers Southeast Alaska and territory, 02 is the remainder of the state.[17] Since most companies subscribe to ISO for fire rates, these are the only territories which exist for this particular line. For homeowners insurance, some of the companies have divided the state into different zones, however, there is no territory which has been strictly designated "rural". It is the intent of this section to suggest the formation of a rural rating territory. This would allow the development of an equitable bush rate, and avoid the problem of forming a subsidization between urban and rural Alaska.

Rating and Relativities

How is a rating territory developed and how does it work? A familiarity with rating and the use of relativities is necessary. Rating depends on an insurer's cost. The insurance premium collected is meant to cover costs the insurer expects to encounter and guarantee a reasonable profit. The insurer's cost includes two general categories. These are:

1) The expected loss and loss adjustment costs;
2) General Company expenses.

The expected loss and loss adjustment cost is also called the expected loss ratio. This is the amount an insurer can expect to pay in settling and adjusting claims and still enjoy a profit. General Company expenses are those expenses incurred in the operation of the business. A cost breakdown shows:

FIGURE 3.1[18]

Expenses	Percent
Company Operating Expenses	6.0
Production Cost Allowance	25.0
Taxes, Licenses & Fees	3.9
Underwriting Profit	6.0
Subtotal	40.9
Expected Loss and Loss Adjustment Ratio	59.1
	100.0%

Company operating expenses include salaries, travel, rent, insurance, etc., and amounts to 6% of the premium dollars. The production cost allowance of 25% includes agents and brokers'

commissions, and money used to generate business such as the money spent on advertising. Taxes, licenses, and fees includes premium tax and licenses required by the Insurance Department to do business in the state. The expected loss and loss adjustment ratio includes all money which can be paid to claimants (48.6%), and the 10.5% needed to adjust claims.

In general, when a company developes rates for homeowner or fire insurance, the actuary simply compares the loss ratio developed over the preceding five year period with the expected loss ratio of 59.1%. If the average loss ratio is less than 59.1%, the company will ask for a decrease. If the loss ratio is greater than 59.1%, the company will ask for an increase. The process is summarized below.

Column (1) This is the premium volume collected for each year shown. The premiums have been adjusted to reflect the current cost of insurance.

Column (2) These are the losses incurred for each year shown. The losses have been trended for inflation, and adjusted to reflect the cost of adjusting claims, and the possibility of a catastrophic loss.

FIGURE 3.2[19]
RATE LEVEL DETERMINATION

Accident Year Ended	(1) Earned Premiums At Present Rates	(2) Adjusted Incurred Losses	(3) Adjusted Loss Ratios (2) ÷ (3)	Weights
12/21/71	2,816,561	1,303,309	.463	.10
12/31/72	3,350,751	2,052,331	.612	.15
12/31/73	3,885,186	1,950,611	.502	.20
12/31/74	3,890,408	2,705,910	.696	.25
12/31/75	5,441,053	2,416,628	.444	.30

To arrive at the final rate level change, the loss ratios in Column (3) are weighted, so the most recent experience counts the most. The loss ratio for 1971 is weighted 10%, the loss ratio for 1972 is weighted 15%, for 1973 20%, for 1974 25%, and for 1975 30%. These are summed and then divided by the expected loss ratio of .591 to arrive at the final rate level change. The process is summarized as:

Σ (weights x adjusted loss ratio) = .546

(.546 ÷ .591) = .924

Indicated Change = -7.6%

Therefore, based on the experience in Figure 3.2, the base rates for all homeowners' policies would be reduced by 7.6%, or a factor of .924.

To understand the effect of a rating territory, let us continue the explanation one step further. Assume that Territory 02 has

FIGURE 3.2[19]
RATE LEVEL DETERMINATION

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$$\Sigma \text{ (weights x adjusted loss ratio)} = .546$$

$$(.546 \div .591) = .924$$

$$\text{Indicated Change} = -7.6\%$$

Therefore, based on the experience in Figure 3.2, the base rates for all homeowners' policies would be reduced by 7.6%, or a factor of .924.

To understand the effect of a rating territory, let us continue the explanation one step further. Assume that Territory 02 has

more losses than territory 01. The relative difference would then be 1.2. The base premium would then be calculated as shown.

Territory 01: Base Premium = (1.0 X .924) = .924 or -7.6%

Territory 02: Base Premium = (1.2 X 924) = 1.108 or +10.8%

What this shows is that Territory 01 would have a -7.6% reduction and Territory 02 would have a +10.8% increase, based on the relative difference between losses in the two territories.

It is the suggestion of the Committee that Insurance Services Office create a Territory 03 to include rural unprotected Alaska. This would allow for the development of territorial relativity based on rural experience.

One caveat to be mentioned is the suggestion that there may not be sufficient premium volume in rural Alaska to develop a statistically valid rate. The ISO has, however, developed a method to determine a credibility factor if there is not sufficient experience. Full statistical credibility is based on 40,000 house years.[20] That is 40,000 houses insured for one year. This means that for five years experience there would have to be a total of 8,000 policies/year. Given the same set of circumstances previously illustrated, assume there is only 20,000 house years of experience.

$$\text{Credibility Factor} = \frac{20{,}000^{1/2}}{40{,}000} = .71$$

Territory 02: Base Premium=[(1.2 X .71) + (.29 X 1.0)
X .924] = 1.055 or +5.5%

What this shows is that without full statistical validity the rate increase would only be 5.5%.

In conclusion it would be up to the ISO to determine exactly what the territorial relativity would be. There are two ways this could be accomplished. First the standard companies could just start writing this business, and develop the relativity over time, or they could estimate the relativity bases on the current experience of protection class 9 & 10. As shown in the introduction, the indicated relativity for protection class 9 & 10, relative to protection class 5 was 1.348. This method would provide a far more equitable rate than the current surcharge of 175% to 300% by the surplus line companies.

C. FAIR Plans

General Description

The term FAIR plan stands for "Fair Access to Insurance Requirements." FAIR plans were created in the late sixties, intended as solutions to the availability problem of essential property insurance within the cores of major cities.[21] Insurers were reluctant to write property insurance in these areas because of old construction, vandalism and fear of riot. To some degree these were legitimate complaints, however, in many cases the result was the denial of property insurance to clean risks by virtue of the location of their dwelling. This reluctance actually amounted to a redline, and the problem was exacerbated by the growing requirement of insurance for financing.

The problem became critical enough to finally elicit Congressional action. Congress passed the urban Property Protection and Reinsurance Act of 1968. This Act reinsured insurers against catastrophic loss caused through riot and civil disorder, but were contingent upon states adopting and insurers participating in FAIR plans.[22] In the late sixties, during a time of largespread civil unrest, the riot reinsurance proved enough of an incentive that insurers actually urged the adoption of FAIR plans.[23] As the number and severity of riots

declined, and the need for the riot reinsurance became less acute, FAIR plans simply became mechanisms by which the availability of property insurance was assured to urban property owners.

FAIR plans are similar in nature to assigned risk pools for automobiles, and are a type of residual market mechanism. Companies operating within a state are required to participate in relation to the total amount of insurance which they write. There are a variety of different structures and organizations, but essentially FAIR plans are pooling arrangements which allow the insurers to spread the losses of marginal risks, or to distribute dividends if the plans operate at a profit. FAIR plans have provided insureds an optional market to the surplus line companies.

In spite of their success in providing insurance to people otherwise unable to obtain it, most FAIR plans have been unprofitable. This is basically because the plans were designed to be subsidized. Data from PIPSO, the Property Insurance Plans Services Office, shows that the total losses for all states from inception through 1976 has been $227,808,000.[24] Although on a nationwide basis FAIR plans have been perennial money losers, some states have shown profits. These states are Georgia, Indiana, Louisiana, New Mexico, Puerto Rico, and the District of Columbia.[25] In fact, the experience of eight states

accounts for 88% of the losses.[26] Generally the plans with high concentrations of urban business like New York or Massachusetts suffer the greatest losses. In states like Georgia and Louisian, losses in the FAIR plans are offset by the relatively good experience of their beach and windstorm plans.

Most FAIR plans offer fire insurance and extended coverage, and coverage for vandalism and malicious mischief. Two states, Massachusetts and Rhode Island also offer homeowner policies.[27] California is currently considering expanding the policy options available under their FAIR plans. Generally, coverage was limited to conform to loan requirements, although limited coverage through FAIR plans has been a major consumer complaint.

Subsidies

Most FAIR plans, since they operate at deficits, require subsidation. In some states the insurance industry has been forced into a situation where they are subsidizing insurance for substandard exposures. This represents an obvious inequity. However, had the companies not put themselves in the position where they had redlined this business, losses incurred would have been accounted for in the rating process. Most FAIR plans are subsidized by the voluntary market in the state.

There are three basic ways which the voluntary market subsidizes the voluntary or residual market. First, three states

have statutory provisions which allow the insurance industry to recoup their losses.[28] Second, in some states, a loading factor is applied in the rate filing for the statewide rate level determination.[29] Finally, the insurance industry has attenpted to pad losses in FAIR plans by placing clean but perhaps marginal risks in the plan.[30]

The three states which have recoupment provisions in the statute are Michigan, Ohio, and New Jersey. The Board of Governors of the Michigan FAIR plan estimates the deficit which they expect the plan to incur in the upcoming year. A loading factor is then applied to the rates for all homeowner and fire policies within the state. This spreads the losses among all the insureds within the state.[31]

In Ohio a rate increment was developed and was applied on April 1, 1977, and will extend to March 31, 1978. The rate increment was based on all losses of the plan from inception to present. The increments were 3% for fire and allied lines, 2% for homeowners, and 2% for commercial multi-peril. It was planned that this increment would be figured at a rate to recoup the plan's entire loss. The rate increment will be evaluated, to see if a continuation is required after March 31, 1978.[32]

The New Jersey legislature has created the New Jersey Insurance Development Fund. This plan surcharges coverages for both private and commercial property. The surcharge applied is 2%.[33]

Administration Organization

FAIR plans consists of a pool, a joint reinsurance association, and an industry placement facility. The pool is simply those insureds unable to purchase insurance from a standard insurer. The Joint Reinsurance Association is a group consisting of all the insurers operating within the state. The industry placement facility is the organization formed by the insurers operating within the state to handle the administrative duties of the plan.

The industry placement facility is organized and operated by the insurance industry. There are basically two types, a servicing carrier or syndicate. The servicing carrier approach is where either a single company or a group of companies handles writing policies, paying claims, and investing the capital. Under the syndicate approach, an autonomous unit is created to handle the business. The operations of the industry placement facility are overseen by a governing committee consisting primarily of members of the industry under direction of the Director of Insurance.

The Joint Reinsurance Association, as mentioned, is made up of all the insurers operating within the state. It is this organization which allows for distribution of losses or payments of dividends depending upon the financial operating results of the plan. This is a significant difference between FAIR plans and assigned risk pools. In assigned risk pools, each risk is assigned to a particular company. In the FAIR plan, all the business is pooled and the total experience is then portioned out to each company in relation to their market share. This structure allows for more equitable distribution of losses or dividends, and avoids the problem of sticking a disproportionate number of particularly bad risks with one insurer.

D. The Develcpment of a Rural Property Insurance Pool

Introduction

The preceding discussion is background for a program to establish a rural property insurance pool. The pool is based on the concept of a FAIR plan, but with some significant changes. These are: (1) the pool will not be associated with the Urban Property Protection and Reinsurance Act of 1968, (2) the pool will only operate in a specific geographic area, and (3) the pool will be self-rating, and will not require subsidization.

The Urban Property Protection and Reinsurance Act of 1968 is a means by which the Federal Government reinsured insurers against catastrophic loss caused through riot and civil disorder. All FAIR plans must meet specification under the act and many of the FAIR plans terminate if the Reinsurance Act is repealed. Rural Alaska was not associated with the riot and civil disorders of the late sixties, and to maintain a connection to the Reinsurance Act is unnecessary. In most cases the riot Reinsurance Act is a vestigal element of FAIR plans, and the resinsurance is no longer being purchased by insurers participating in the plans.

The second major difference is that the pool is designed to operate in a specific geographic area. Most FAIR plans were intended to operate primarily in the decaying cores of large cities. The proposed property insurance pool is designed only to operate in rural areas where it has been determined there is an availability problem in the standard market. This conforms roughly to areas designated protection class 9 or 10, but also includes a number of rural communities with limited protection. In this respect the pool is similar to some of the beach plans operating in the southern coastal states, or the brush plan in California. The urban areas of Alaska have been excluded because there is no evidence of an availability problem. This will also preclude the insurers from placing marginal risks in the plan.

Finally, the pool is designed to operate in what amounts to a separate rating territory as suggested in the second section of this report. The loss experience would be figured into the overall rate level determination and a relativity would be applied to policies issued by the pool. The relativity would be based on the loss experience from the pool. The current indicated relativity for protection class 9 is 1.195 and for protection class 10, 1.348. See "Introduction." This is based on a comparison to protection class 5 which is the base or unity premium.

Pool Operation

The pool would be administered by a Governing Committee, subject to supervision by the Director of Insurance, and operated by a manager chosen by the Committee. The Committee would consist of five insurers, one each from the following organizations:

- The American Insurance Association
- American Mutual Insurance Alliance
- National Association of Independent Insurers
- All other stock insurers
- All other non-stock insurers.

Each member would have voting power. The members from the three trade associations would be appointed by the respective member companies. The other two representatives would be elected with each insuring company's vote weighted by their respective share of the market. The governing committee would be empowered to issue operating procedures and other directives to carry out the purposes of the pool. The plan also includes provisions for the operation of a joint reinsurance association. The reinsurance association would assume reinsurance on behalf of the participating insurers, and cede reinsurance on all eligible risks. Policy limits would be set at $1,500,000. Each insurer operating within the state is required to participate in the total writings, expenses, losses, and profits of the Association in proportion to its premiums written. If a member goes insolvent during operation of this program, the remaining members are responsible for any unpaid losses.

The pool would be required to offer a fire policy with extended coverage and coverage for vandalism and malicious mischief. This is not as complete a coverage as a homeowner policy, but it would meet the minimum requirements for bank financing. This is what is commonly referred to as essential property insurance.

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THE ALASKA EXPERIENCE

fire & homeowners insurance

1972-1976

REPORT
ON
HOMEOWNERS AND FIRE
INSURANCE

Division of Insurance
Department of Commerce and
Economic Development
State of Alaska

January 6, 1978

Jay S. Hammond, Governor
Phillip Hubbard, Commissioner

Richard L. Block, Director

State of Alaska
Department of Commerce
& Economic Development
Division of Insurance

In January of 1977 the Division of Insurance held hearings on the subject of property insurance. These hearings were held in Anchorage, Fairbanks and Sitka and were prompted by several complaints to the division regarding the red lining of certain areas by insurance companies and by the general impression of consumer dissatisfaction. The hearings were held to determine first if there actually was a problem, and if there was a problem, of its severity, and what corrective alternatives were available.

Testimony was presented from representatives of the industry, trade associations, and a rating bureau, as well as numerous consumers. Several companies testified that their reluctance to write coverage in part of Fairbanks and outlying areas stemmed from the lack of building codes and fire protection. Consumers testified as to cancellation of present coverages and the expensive price of purchasing replacement coverage. It seemed to be the lack of standard priced insurance that was the problem, not total unavailability. In other words, the conclusion seemed to be that the problem lay not in unavailability, but in unaffordability.

Testimony also showed that consumers realizing their vulnerability in outlying areas are already establishing new volunteer fire departments and developing individual fire protection ideas.

One other step was made by concerned citizens in Fairbanks which led to the organization of the North Star Borough Inspection Council and the passage of legislation which provided for inspection of dwellings to insure proper construction and the ensuing credit allowed on insurance policies for inspected dwellings. Thus, those companies wanting the assurance of proper construction are provided with the tool of the inspection council. Credits allowed for dwellings meeting the criteria for inspection have been approved by the division and range from 5% to 10%.

Following the hearings the division began an extensive study of the property insurance market.

The study focused on the level of profitability and the rate structure of the Alaskan fire and homeowners insurance industry. Utilizing statistics already on file and data submitted by various companies upon the request of the division, the investigation was completed over the next two months, October and November.

The profitability study revealed that the fire and homeowners industry in the State is in a healthy condition. Exhibit I, Alaska Fire Insurance Experience 1972-76, shows that that line has had fine five year level of profitability, with the exception of a disastrous 1976 which was the result of the experience of some four or five companies. Despite this, the five year loss ratio was 45.9%. Exhibit II, the combined experience and expense exhibit, which has become an important tool in the division's market surveillance efforts, demonstrates the approximate permissible loss ratio's for companies in Alaska. The 1975 data requires some explanation. The expense figures submitted by the Reserve Insurance Company are not regarded as credible. A quick comparison with the statistics supplied by the other companies is graphic explanation. The second set of totals (noted "See Reserve") represent the average expenses, discounting Reserve's figures. The resultant permissible loss ratio is 62.4%. For 1976 it is 62.7%, with a two year average 62.6% permissible loss ratio, the 45.9% actual loss ratio for 1972-76 leaves a margin of some 16.7% for profit. Provision for bulk reserves would have to be made from this margin, but there is still an excellent return.

Exhibits III and IV are identical studies in the homeowners insurance line. The Experience Tables indicate that homeowners companies in Alaska have enjoyed a fairly consistent five year loss picture. The overall ratio is 48.0%. The Expense charts show a permissible loss ratio of 58.7% in 1975 and 60.1% in 1976, a 59.5% average. A margin of some 11.5%, discounting bulk reserves. Again, a good return for the industry.

The high level of profit for the two lines is further supported by the next two exhibits. While neither of these exhibits contains a large enough percentage of the total market to be regarded concrete trends, they are valuable indicators nonetheless. In any event, the companies included in Exhibits V and VI were the only ones who were able to respond to our requests for the information therein. Exhibit V suggests that the prosperity of the fire insurance business was felt by both the dwelling and commercial lines which had respective five year loss ratios of 32.8% and 41.8%. Exhibit VI details the zone experience of four homeowners companies, including the top three. The result is that both zones are shown to render a profit, despite inflation of the loss figures by State Farm's inclusion of loss adjustment expenses with losses.

It has been established that fire and homeowners insurance are moneymaking endeavors in Alaska. Whether or not the rates which produce such profits are excessive is the natural question. The factors involved in such a question include rate levels and distribution, availability of insurance and competition for the market. An examination of these elements follows.

Exhibit VII, lists the rates for fire insurance charged by companies subscribing to the Insurance Services Office rating plan. These companies accounted for 91.2% of the earned premium volume in Alaska in 1975 and 1976 and include the top sixteen companies each year. Exhibit VIII, displays the rates for the top ten Alaskan homeowners companies in 1976. These companies totaled 87.7% of the earned premium volume for that year. In both cases the rates rise as the protection class designation rises. Exhibit IX lists ISO fire premium relativities, both those currently in use and those indicated by actual loss experience. The current relativities, using class 5 premiums as the base, show that the premium load is borne heavily by protection classes seven through ten, particularly classes nine and ten, the unprotected areas. The indicated relativities demonstrate that the premium load is not equitably distributed. The lower protection classes pay less than experience indicates they should and the upper classes (seven through ten) pay on the average about twice what the experience would seem to indicate they should pay. The inequitable distribution of premium weight is further supported by Exhibit X. For the years 1971-75 the unprotected classes have a consistently lower loss experience for the ISO dwelling comprehensive (standard) fire policy than do the protected classes. The five year loss ratio for protected areas is 40.4% and for unprotected it is 25.5%. What data is available on homeowners insurance seems to suggest that the premium distribution there is more closely aligned to loss experience.

The matter of competition for the consumer's premium dollar is addressed by Exhibits XI and XII. The market concentration share charts are extremely interesting. They indicate that the Alaskan markets for both homeowners and fire insurance are dominated by a few companies. The homeowners line has five companies accounting for 64.5% to 73.4% of business from 1972-76, while nationwide, in 1976, twenty-six groups, each comprised of a varying number of companies (figures were not available for individual companies) totaled 64.8% of the market. Fire insurance shows 10 companies holding 57.1% to 69.1% of the market for the period, while nationwide the top twenty-six groups in 1976 had a 59.0% market share.

It is obvious that competition in Alaska is not nearly of the level that it is nationally. The percentage of the Alaskan fire premium written by surplus lines companies (Exhibit XII) is further evidence that statewide competition for the insurance dollar may not be what it could. With portions like 26.9% and 32.8% of the written premiums for fire insurance being supplied by surplus (non-admitted) companies it is apparent that, for one reason or another, including proper underwriting restrictions; many Alaskans find it necessary to turn to highly priced markets in order to insure their property. Surplus lines companies do not submit separate figures for homeowners insurance.

To properly investigate the question of availability, the existence of a hidden component must be recognized. This factor is, is what is available, affordable? To determine the availability of fire and homeowners insurance, the division conducted a telephone poll of agents across the state. Agencies in Anchorage, Kenai, Palmer, Juneau, and Fairbanks were contacted. The general consensus, excepting Fairbanks, was that insurance was available for everyone who had insurable property. Most unprotected property could be placed in the standard market, depending on condition and location of the property, and surplus lines would write the remainder, in almost all cases. Fairbanks was a different story. One agent stated that all his business, even in Protection class four areas, was through non-admitted markets. Another said that most risks within 10 miles of the city limits could be placed in the standard market, although his agency was selective about whom they did insure, in order not to jeopardize the market. Still another agency replied that nothing outside of the North Star Borough could be written in the standard market. They also said log homes were not insured unless "significant amounts of other construction classes" were involved. All said that property whose condition or location precluded standard coverage usually could be written by surplus companies. These statements agreed in general tenor with what had come out of the hearings in January. The complaint then seemed to be more one of price rather than availability, that the admitted carriers were not making reasonably priced insurance available to all those who desired it.

Insurance for property owners unable to obtain coverage in the standard market is available from two sources. One admitted company has filed a fire program to insure substandard dwellings at 175% of ISO fire rates. This company currently writes only a very small percentage of the market in Alaska. Most consumers find they have to resort to the surplus companies. A telephone interview of five surplus lines brokers who specialize in homeowners and fire insurance was made by the division. The resultant picture of the

surplus fire rates was that they ranged from 150% to 300% of the ISO dwelling fire rates, with the majority at the top end of the spectrum. Examination of 59 homeowners policy affidavits filed by one surplus lines broker confirmed this, eight being 225% of ISO rates and 51 being 300%. Fifty fire policy affidavits filed by the same broker showed 5 at 200% of ISO fire rates, one at 225% and 44 at 300%. A perusal of Exhibit VII demonstrates that 300% of ISO fire rates for unprotected dwellings is getting into a lot of money. For purposes of comparison, please note that Fireman's Fund and Pacific Insurance Companies utilize the standard ISO homeowners rates (Exhibit VIII). Again, the cost is steep at 300% of ISO

The five year financial history of the personal lines of property insurance has been one that has reflected solid earnings to the industry. The rate structure and level of competition, for whatever reason, do not serve the consumer as well as they should. In view of the high level of profitability for the state as a whole, the industry should be considering lower rates and expanded markets. The Division of Insurance has been encouraging this approach as a voluntary solution by the companies. On the other hand, a number of plans to assure the availability of reasonably priced insurance, such as a Joint Underwriting Association or a Market Availability Program, have been suggested.

The division also has begun to assume the responsibility of better informing (via this report) the consumers of alternatives available to them. The wise consumer will help himself, by shopping thoroughly for insurance and making certain the dwelling he builds or buys is constructed to meet all applicable safety codes. If the consumer takes positive agressive action, the industry will find it in their own best interests to respond in kind. The data contained in this report indicates that the situation is ripe for change. Concerted effort by industry, government and consumer will effect that change.

Richard L. Rainery
Insurance Market Analyst
Marilyn L. Van Vleit
Insurance Market Analyst
Division of Insurance
January 6, 1978

Exhibit I

Alaska Fire Insurance Experience - 1972

Company	Earned Premium	Incurred Losses	Loss Ratio
New Hampshire Insurance Co.	$ 986,869	$ 387,489	39.3
U.S. Fire Insurance Co.	895,096	472,374	52.3
Pacific Insurance Co.	519,108	63,568	12.3
Highland Insurance Co.	486,640	502,784	103.3
Fireman's Fund Insurance Co.	439,520	205,472	46 7
Insurance Co. of N. America	423,937	248,195	58.5
Great American Insurance Co.	341,585	230,795	67.6
Hartford Fire Insurance Co.	334,151	132,259	39.6
Employers Commercial Union Insurance	330,012	227,886	69.1
U.S. Fidelity & Guaranty Co.	309,553	125,208	41.9
Eagle Star Insurance Co.	309,189	129,680	41.9
Harbor Insurance Co.	288,950	11,400	3.9
Home Insurance Co.	171,435	139,623	80.7
North River Insurance Co. (N.J.)	166,561	76,144	45.7
State Farm Fire & Casualty Co.	159,971	55,349	34.6
Allstate Insurance Co.	146,723	26,538	18.1
Jefferson Insurance Co. of N.Y.	88,004	28,619	32.5
Westchester Fire Insurance Co.	78,186	80,232	102.6
Aetna Casualty & Surety Co.	73,266	1,967	2.7
Continental Insurance Co.	72,558	58,496	80.6
St. Paul Fire & Marine Insurance Co.	66,863	21,933	32.8
Hallmark Insurance Co.	64,203	3,926	6.1
Central Mutual Insurance Co.	62,610	15,139	24.2
State Farm General Insurance Co.	55,683	3,866	6.9
North East Insurance Co.	55,330	41,264	74.6
Mission Insurance Co.	55,222	4,068	7.4
Total (95.2% of all business)	$6,981,225	$3,293,674	47.2
Total All Cos.	$7,329,794	$3,480,847	47.5

Alaska Fire Insurance Experience - 1973

Company	Earned Premium	Incurred Losses	Loss Ratio
New Hampshire Insurance Co.	$ 872,330	$ 343,665	39.4
U.S. Fire Insurance Co.	683,105	30,787	4.5
Insurance Co. of N. America	568,404	99,677	17.5
Pacific Insurance Co.	560,230	136,299	24.3
Highlands Insurance Co.	555,451	32,954	5.9
Fireman's Fund Insurance Co.	394,571	61,937	15.7
Great American Insurance Co.	272,750	100,075	36.7
Mission Insurance Co.	263,166	1,231,806	468.1
Harbor Insurance Co.	238,252	2,336	1.0
American Home Assurance Co.	221,446	0	0.0
Home Insurance Co.	219,021	45,346	20.7
Commerical Union Insurance Co.	215,707	27,820	12.9
Hartford Fire Insurance Co.	204,542	82,978	40.6
U.S. Fidelity & Guaranty Co.	186,630	93,659	50.2
Allstate Insurance Co.	175,471	56,556	32.2
State Farm Fire & Casualty Co.	171,306	34,937	20.4
Eagle Star Insurance Co.	171,309	(1,745)	(1.0)
Industrial Indemnity Co. of Alaska	145,760	85,871	58.9
North River Insurance Co. (N.J.)	113,778	49,458	43.5
Lumberman's Underwriters Alliance	93,955	0	0.0
Yosemite Insurance Co	91,163	0	0.0
Reserve Insurance Co.	88,739	0	0.0
St. Paul Fire & Marine Insurance Co.	81,786	52	0.1
Providence Washington Insurance Co. of Alaska	78,520	10,854	13.8
Central National Insurance Co. of Omaha	77,585	0	0.0
Atlas Assurance Co., Ltd.	75,009	0	0.0
Hallmark Insurance Co.	69,685	65,913	94.6
State Farm General Insurance Co.	64,298	27,295	42.5
Arkwright-Boston Manufacturers Mutual Insurance Co.	62,860	(1,845)	(2.9)
Alaska Insurance Co.	62,460	0	0.0
Unigard Mutual Insurance Co.	62,033	0	0.0
Peninsular Fire Insurance Co.	59,007	2,741	4.6
Jefferson Insurance Co. of N.Y.	59,953	42,335	71.8
Westchester Fire Insurance	55,595	40,428	72.7
Allendale Mutual Insurance Co.	53,460	0	0.0
Providence Washington Insurance Co.	38,153	0	0.0
Central Mutual Insurance Co.	33,230	1,442	4.3
Protection Mutual Insurance Co.	29,615	(88,862)	(300.1)
American Manufaturing Insurance Co.	29,508	12,685	43.
Total (95% of all business)	$7,500,149	$2,627,454	35.0
Total All Cos.	$7,893,310	$2,721,242	34.5

Alaska Fire Insurance Experience - 1974

Company	Earned Premium	Incurred Losses	Loss Ratio
Mission Insurance Co.	$ 863,265	$ 19,193	2.2
Pacific Insurance Co.	547,449	170,145	31.1
Alaska Insurance Co.	531,784	61,513	11.6
Industrial Indemnity Co of Alaska	516,571	121,991	23.6
New Hampshire Insurance Co	514,486	172,422	33.5
Highlands Insurance Co.	511,787	190,935	37.3
Stuyvesant Insurance Co.	356,737	12,215	3.4
Unigard Mutual Insurance Co	355,356	0	0.0
U.S. Fire Insurance Co.	317,087	131,880	41.6
Fireman's Fund Insurance Co.	314,770	35,121	11.2
Providence Washington Insurance Co. of Alaska	280,732	17,069	6.1
Insurance Co. of N. America	272,295	12,753	4.7
Commercial Standard Insurance Co.	242,411	0	0.0
Reserve Insurance Co.	218,923	7,184	3.3
State Farm Fire & Casualty Co.	193,991	32,575	16.4
Allstate Insurance Co.	190,167	73,275	38.5
Great American Insurance Co.	189,133	70,124	37.1
Harbor Insurance Co.	185,825	60	0.0
U.S. Fidelity & Guaranty Co.	145,863	824	0.6
Hartford Fire Insurance Co.	134,635	6,125	4.5
St. Paul Fire & Marine Insurance Co.	114,580	7,325	6.4
Yosemite Insurance Co	107,773	3,112	2.9
Central National Insurance Co. of Omaha	97,942	0	0.0
Atlas Assurance Co., Ltd.	95,073	114,195	120.1
Peninsular Fire Insurance Co.	92,416	2,880	3.1
Commercial Union Insurance Co.	84,036	31,309	37.2
American Home Assurance Co.	71,693	85,000	118.6
Arkwright-Boston Manufacturers Mutual Insurance Co.	68,511	3,747	5.5
State Farm General Insurance Co.	62,938	19,796	31.4
Hallmark Insurance Co.	61,929	6,011	9.7
Allendale Mutual Insurance Co.	57,320	0	0.0
Home Insurance Co.	55,038	59,031	107.3
Lumberman's Underwriting Alliance	40,310	0	0.0
Providence Washington Insurance Co.	35,246	0	0.0
North River Insurance Co. (N.J.)	38,076	59,676	156.7
Jefferson Insurance Co. of N.Y.	32,022	11,498	35.2
Federal Insurance Co.	31,908	2,000	6.3
Allied Insurance Co.	30,641	1,615	5.3
Total (95.1% of all business)	$8,050,779	$1,544,666	19.2
Total All Cos.	$8,467,152	$1,786,314	21.0

Alaska Fire Insurance Experience - 1975

Company	Earned Premium	Incurred Losses	Loss Ratio
Alaska Insurance Co.	$ 998,163	$ 290,098	29.1
Pacific Insurance Co.	679,031	987,734	144.7
Industrial Indemnity Co. of Alaska	645,176	235,268	36.5
Unigard Mutual Insurance Co.	613,632	760,200	123.9
American Home Assurance Co.	481,162	361,121	75.2
Providence Washington Insurance Co. of Alaska	406,177	101,782	25.1
Highlands Insurance Co.	387,345	78,374	20.2
Fireman's Fund Insurance Co.	373,781	21,034	6.5
Great American Insurance Co.	284,233	102,710	36.1
Insurance Co. of N. America	276,895	68,141	24.6
Reserve Insurance Co.	257,175	37,930	14.7
New Hampshire Insurance Co.	235,724	14,858	6.3
State Farm Fire & Casualty Co.	221,484	54,923	24.8
Mission Insurance Co.	166,305	30,828	18.5
Harbor Insurance Co.	165,824	457,198	275.7
Allstate Insurance Co.	161,891	28,723	17.7
Aetna Insurance Co.	154,409	11,091	7.2
Yosemite Insurance Co.	149,239	70,254	47.1
Stuyvesant Insurance Co.	44,997	0	0.0
St. Paul Fire & Marine Insurance Co.	130,627	51,636	39.5
U.S. Fidelity & Guaranty Co.	113,122	35,003	30.9
Peninsular Fire Insurance Co.	109,273	32,019	29.3
Home Insurance Co.	107,260	163,556	152.5
Commercial Union Insurance Co.	96,094	56,289	58.6
U.S. Fire Insurance Co.	90,320	28,420	31.5
Central National Insurance Co. of Omaha	88,513	0	0.0
Arkwright-Boston Manufacturers Mutual Insurance Co.	86,414	1,000	1.2
Hallmark Insurance Co.	85,256	13,517	15.9
National Union Fire Insurance Co.	84,479	50,000	59.2
State Farm General Insurance Co.	65,225	8,516	13.1
Allendale Mutual Insurance Co.	63,161	1,000	1.6
Hartford Fire Insurance Co.	61,037	100,215	164.2
Atlas Assurance Co. Ltd.	49,183	28,611	58.2
Providence Washington Insurance Co.	43,514	2,933	6.2
Protection Mutual Insurance Co.	40,402	(46,000)	(113.7)
Allied Insurance Co.	38,234	4,373	11.4
Travelers Indemnity Co.	28,253	1,903	6.6
Total (95% of all business)	$8,129,851	$4,243,027	52.2
Total All Cos.	$3,553,533	$4,360,149	51.0

Alaska Fire Insurance Experience - 1976

Company	Earned Premium	Incurred Losses	Loss Ratio
Alaska Insurance Co.	$1,484,200	$ 226,176	15.2
Industrial Indemnity Co. of Alaska	870,433	340,523	39.1
Pacific Insurance Co.	611,159	482,148	78.9
National Union Fire Insurance Co.	563,269	1,000	0.2
Great American Insurance Co.	420,181	210,730	50.2
Providence Washington Insurance Co. of Alaska	402,388	33,272	8.3
Fireman's Fund Insurance Co.	387,998	122,764	31.6
Aetna Insurance Co.	350,208	2,051,139	584.9
American Home Assurance Co.	341,613	795,922	233.0
Mission Insurance Co.	292,384	449	0.2
Atlas Assurance Co., Ltd.	290,360	41,136	14.2
Insurance Co. of N. America	259,083	54,721	21.1
Highlands Insurance Co.	235,371	25,063	10.6
State Farm Fire & Casualty Co.	234,964	122,337	52.1
Allstate Insurance Co.	208,719	264	0.1
St. Paul Fire & Marine Insurance Co.	202,109	28,840	14.3
Affiliated FM Insurance Co.	135,053	0	0.0
Puritan Insurance Co.	130,457	0	0.0
Arkwright-Boston Manufacturers Mutual Insurance Co.	120,394	25,562	21.2
Reserve Insurance Co.	113,917	483,074	424.1
U.S. Fidelity & Guaranty Co.	100,815	10,994	10.9
Peninsular Fire Insurance Co.	94,030	1,139	1.2
Allied Insurance Co.	79,674	0	0.0
Central National Insurance Co. of Omaha	76,106	1,743	2.3
Harbor Insurance Co.	75,493	238,268	315.6
Allendale Mutual Insurance Co.	73,713	22,792	30.9
Protection Mutual Insurance Co.	60,652	100,000	164.9
State Farm General Insurance Co.	60,129	34,226	56.9
Commercial Union Insurance Co.	54,545	16,314	29.9
Hallmark Insurance Co.	52,569	30,314	57.7
Hartford Fire Insurance Co.	50,115	5,272	10.5
Employers Mutual Liability Insurance Co.	47,268	0	0.0
Home Insurance Co.	46,653	4,839	10.4
Unigard Mutual Insurance Co.	36,127	790,619	2,188.4
New Hampshire Insurance Co.	32,172	168,939	525.1
Horace Mann Insurance Co.	28,193	494	1.8
U.S.A.A.	27,927	0	0.0
Lumbermen's Underwriting Alliance	26,019	0	0.0
Aetna Casualty & Surety Co.	25,514	177	0.7
American Motorists Insurance Co.	24,670	44,000	178.4
Total (95.4% of all business)	$8,726,601	$6,515,280	74.6
Total All Cos.	$9,147,766	$6,653,254	72.7

Alaska Fire Insurance Experience - 1972-76

Company	Earned Premium	Incurred Losses	Loss Ratio
Alaska Insurance Co.	$ 3,068,807	$ 579,801	18.8
Pacific Insurance Co.	2,916,968	1,835,294	62.9
New Hampshire Insurance Co.	2,641,58.	1,087,371	41.2
Industrial Indemnity Co. of Alaska	2,177,940	783,673	36.0
Highlands Insurance Co.	2,176,536	830,160	38.1
United States Fire Insurance Co.	2,000,365	664,826	33.2
Fireman's Fund Insurance Co.	1,860,640	446,328	24.0
Insurance Co. of N. America	1,800,614	483,497	26.9
Mission Insurance Co.	1,647,122	1,286,344	78.1
Great American Insurance Co.	1,507,912	714,454	47.4
Providence Washington Insurance Co. of Alaska	1,167,817	162,977	14.0
American Home Assurance	1,158,926	1,273,910	109.9
Unigard Mutual Insurance Co.	1,067,148	1,550,019	145.3
State Farm Fire & Casualty Co.	966,036	300,121	30.4
Harbor Insurance Co.	938,344	709,282	75.6
Allstate Insurance Co.	882,571	185,356	21.0
U.S. Fidelity & Guaranty Co.	846,043	265,088	31.4
Hartford Fire Insurance Co.	781,380	326,849	41.6
Commercial Union Insurance Co.	780,384	359,618	46.1
Reserve Insurance Co.	703,612	528,108	75.1
National Union Fire Insurance Co.	678,144	51,150	7.5
Home Insurance Co.	599,407	411,395	68.6
St. Paul Fire & Marine Insurance Co.	595,965	109,786	18.4
Aetna Insurance Co.	562,703	2,060,276	366.5
Stuyvesant Insurance Co.	551,430	12,215	2.2
Atlas Assurance Co., Ltd.	525,679	183,942	35.0
Eagle Star Insurance Co., Ltd.	480,091	128,041	26.7
Arkwright-Boston Manufacurers Mutual Insurance Co.	391,969	30,714	7.8
Central National Insurance Co. of Omaha	385,923	2,258	0.6
Peninsular Fire Insurance Co.	377,108	39,413	10.4
Yosemite Insurance Co.	375,081	113,190	30.2
North River Insurance Co. (N.J.)	339,324	185,322	54.6
Hallmark Insurance Co.	333,642	119,681	35.9
State Farm General Insurance Co.	308,331	93,729	30.4
Commercial Standard Insuranc Co.	291,775	0	0.0
Allendale Mutual Insurance Co.	284,094	23,792	8.4
Lumbermin's Underwriting Alliance	214,507	0	0.0
Jefferson Insurance Co. of N.Y.	203,335	80,074	39.3
Protection Mutual Insurance Co.	201,181	11,119	5.5
Affiliated FM Insurance Co.	166,060	0	0.0
Allied Insurance Co.	161,335	(2,748)	(1.7)
Westchester Fire Insurance Co.	154,732	135,249	87.4
Aetna Casualty & Surety Co.	151,164	2,135	1.4
Total (95.1% of all business)	$39,464,912	$18,167,232	46.0
Total All Cos.	$41,391,653	$19,002,306	45.9

Insurance Report 1972-76
Richard Rainery Nov. 1, 1977

Exhibit II

1975 - ALASKA FIRE INSURANCE EXPERIENCE AND EXPENSES

ISO Company	Earned Premiums	Incurred Losses	Loss Ratio	Loss Adjust. Expenses	Commission Brokerage	Other Acq. Field Super. Collection	General Expenses	Taxes Licenses Fees	Total Expenses Incurred	Resultant Permissible Loss Ratio
*Alaska Insurance Co.	$ 978,163	$290,098	29.1%	5.1	21.2	4.0	3.4	3.5	37.2	62.8
*Pacific Insurance Co.	679,031	982,734	144.7	2.5	23.9	2.3	7.6	2.7	39.0	61.0
*Industrial Indemnity Company of Alaska	645,176	235,288	36.5	5.5	19.3	3.0	10.6	2.5	40.9	59.1
*Unigard Mutual Insurance Co.	613,632	760,200	123.9	2.8	19.4	5.6	8.2	2.3	38.3	61.7
*American Home Assurance Co.	483,162	363,121	75.2	3.7	21.9	2.8	3.0	4.0	32.1	67.9
*Providence Washington Insurance Co. of Alaska	406,177	101,782	25.1	4.9	18.3	4.2	12.3	2.7	42.4	57.6
*Highlands Insurance Co.	387,335	78,374	20.2	2.4	26.4	2.1	2.0	2.0	34.9	65.1
*Fireman's Fund Insurance Co.	323,781	21,034	6.5	5.3	12.9	3.5	11.1	1.9	34.7	65.3
*Great American Insurance Co.	284,283	102,730	36.1	4.4	20.3	3.0	12.8	2.6	43.1	56.9
*Insurance Co. of North America	276,895	68,141	24.6	3.9	13.1	4.7	9.8	3.8	35.3	64.7
*Reserve Insurance Co.	257,175	37,980	14.7	106.2	40.0	128.5	117.5	80.3	472.9	(372.9)
*New Hampshire Insurance Co.	235,723	14,858	6.3	5.1	21.2	4.0	3.4	3.5	37.2	62.8
*State Farm Fire & Casualty Co.	221,484	54,923	24.8	3.5	27.3	4.3	4.6	1.1	40.8	59.2
*Mission Insurance Co.	166,385	30,828	18.5	1.3	11.9	2.5	0.6	2.1	18.4	81.6
*Harbor Insurance Co.	165,824	457,198	275.7	1.2	18.6	0.9	2.4	4.2	27.2	72.8
*Allstate Insurance Co.	161,891	28,723	17.7	3.0	18.7	4.2	4.2	2.6	32.7	67.3
*Aetna Insurance Co.	154,409	11,091	7.2	5.2	20.2	3.5	8.3	3.6	40.8	59.2
*Yosemite Insurance Co.	149,239	70,254	47.3	4.9	25.9	5.9	3.6	3.1	43.4	56.6
*Stuyvesent Insurance Co.	134,997	0	0.0	2.1	19.8	1.2	5.4	1.4	29.8	70.2
*St. Paul Fire & Marine Insurance Co.	133,627	51,616	38.6	2.6	19.6	2.4	10.3	3.4	38.3	61.7
*U.S. Fidelity & Guaranty Co.	113,122	35,003	30.9	3.2	16.6	2.4	8.4	2.3	32.9	67.1
*Peninsular Fire Insurance Co.	109,273	32,019	29.3	7.1	12.3	5.4	5.7	4.9	35.5	64.5
*Home Insurance Co.	107,260	163,556	152.5	4.7	14.5	2.2	9.8	2.9	34.1	65.9
*Commercial Union Insurance Co.	96,084	56,289	58.6	2.5	16.6	1.9	10.4	3.2	34.6	65.4
*U.S. Fire Insurance Co.	90,320	28,420	31.5	5.5	19.3	3.0	10.6	2.5	40.9	59.1
*Central National Insurance Co. of Omaha	88,513	0	0.0	3.7	5.3	12.2	8.6	17.6	47.4	52.6
Arkwright-Boston Manufacturers Mutual Insurance Co.	86,414	1,000	1.2	3.2	2.3	9.7	15.1	5.0	35.3	64.7
*Hallmark Insurance Co.	85,256	13,517	15.9	18.8	(21.4)	92.5	17.3	17.7	72.7	27.3
*National Union Fire Insurance Co.	84,879	50,000	59.2	3.7	21.9	2.8	3.0	3.7	35.1	64.9
*State Farm General Insurance Co.	65,225	8,546	13.1	3.7	22.2	6.4	6.7	1.8	40.8	59.2
Allendale Mutual Insurance Co.	63,161	1,000	1.6	1.9	6.3	10.9	.6	2.5	38.2	61.8
*Hartford Fire Insurance Co.	61,037	100,215	164.2	4.4	20.9	2.2	.8	3.1	43.4	56.6
*Atlas Assurance Co., Ltd.	49,183	28,611	58.2	4.9	31.7	0.0	.1	9.5	50.2	49.8
*Providence Washington Ins. Co.	47,574	2,939	6.2	4.9	18.3	4.2	.3	2.7	42.4	57.6
*Protection Mutual Insurance Co.	40,463	(46,000)	(113.7)	2.6	1.4	11.6	9.5	2.9	28.0	72.0
*Allied Insurance Co.	38,234	4,373	11.4	3.9	13.1	4.7	9.8	3.8	42.6	57.4
Travelers Indemnity Co.	28,853	1,903	6.6	4.0	14.2	5.8	15.3	3.3	42.6	57.4
Total (95% of all business) - Average	$8,129,851	$4,243,027	52.2	7.3	19.2	8.6	10.8	5.7	51.5	48.5
Total All Companies	$8,553,533	$4,360,149	51.0	4.1	18.3	4.6	7.4	3.2	See Reserve 37.6	62.4
*ISO Total (93% of all business)- Average	$7,951,423	$4,331,124	54.5	7.4	19.4	8.5	10.8	5.7	51.8 37.7	48.2 62.3

1976 - ALASKA FIRE INSURANCE EXPERIENCE AND EXPENSES

Company	Earned Premium	Incurred Losses	Loss Ratio	Loss Adjust. Expenses	Commission Brokerage	Other Acq. Field Super. Collection	General Expenses	Taxes Licenses Fees	Total Expenses Incurred	Resultant Permissible Loss Ratio
Alaska Insurance Co.	$ 1,484,200	$ 226,176	15.2%	4.8	20.2	4.5	2.9	3.6	36.0	64.0
Industrial Indemnity Company of Alaska	870,433	340,523	39.1	10.4	17.6	2.4	7.3	2.9	40.6	59.4
Pacific Insurance Co.	611,150	482,148	78.9	2.4	22.9	1.9	5.9	1.8	34.9	65.1
National Union Fire Insurance Co.	563,269	1,030	0.2	4.5	24.9	4.0	4.1	3.9	41.4	58.6
Great American Insurance Co.	470,181	210,730	50.2	4.4	19.1	3.8	14.3	2.4	44.0	56.0
Providence Washington Insurance Co. of Alaska	402,388	33,272	8.3	3.7	19.5	1.8	8.6	2.4	36.0	64.0
Fireman's Fund Insurance Co.	387,938	122,764	31.6	5.5	15.5	3.5	10.3	2.6	37.4	62.6
Aetna Insurance Co.	350,700	2,051,139	584.9	3.5	20.3	3.2	8.2	3.2	38.4	61.6
American Home Assurance Co.	341,611	795,922	233.0	4.5	24.9	4.0	4.1	3.9	41.4	58.6
Mission Insurance Co.	292,384	449	0.2	1.7	(28.6)	4.1	1.1	3.0	(16.6)	116.6
Atlas Assurance Co. of London Ltd.	290,360	41,136	14.2	2.9	32.9	0.0	3.2	8.2	47.2	52.8
Insurance Co. of North America	259,089	54,721	21.1	2.8	13.5	4.4	9.8	4.0	34.5	65.5
Highlands Insurance Co.	235,371	25,063	10.6	2.9	27.3	1.9	2.3	2.0	36.4	63.6
State Farm Fire & Casualty Co.	234,964	122,337	52.1	3.2	24.4	8.1	5.9	3.0	44.6	55.4
Allstate Insurance Co.	208,119	264	0.1	4.0	18.5	4.6	2.9	2.5	32.5	67.5
St. Paul Fire & Marine Insurance Co.	202,109	28,840	14.3	1.9	18.9	2.3	9.8	3.3	36.2	63.8
Affiliated FM Insurance Co.	135,058	0	0.0	8.4	33.5	2.8	.0	21.5	66.2	33.8
Puritan Insurance Co.	130,457	0	0.0	10.5	9.2	6.1	33.6	21.2	88.6	11.4
Arkwright-Boston Manufacturers Mutual Insurance Co.	120,394	25,562	21.2	2.2	1.1	7.7	15.7	4.4	31.1	68.9
Reserve Insurance Co.	113,917	483,074	424.1	4.1	19.2	1.6	11.8	2.7	39.4	60.6
U.S. Fidelity & Guaranty Co.	100,815	10,994	10.9	3.7	17.4	2.7	8.0	3.2	35.0	65.0
Peninsular Fire Insurance Co.	94,090	1,139	1.2	8.9	14.8	15.2	6.7	8.7	54.2	45.8
Allied Insurance Co.	79,674	0	0.0	2.9	13.8	4.3	9.5	4.0	34.5	65.5
Central National Insurance Co. of Omaha	76,106	1,743	2.3	3.3	(53.2)	12.6	16.6	33.1	12.4	87.6
Harbor Insurance Co.	75,493	238,268	315.6	3.9	(12.5)	2.7	2.2	10.8	7.1	92.9
Allendale Mutual Insurance Co.	73,714	22,792	30.9	2.9	8.4	11.3	15.7	2.8	41.1	58.9
Protection Mutual Insurance Co.	60,652	100,00	164.9	2.6	.2	14.2	1.9	4.5	23.4	76.6
State Farm General Insurance	60,129	34,226	56.9	3.2	24.4	8.1	5.9	3.0	44.6	55.4
Commercial Union Insurance Co.	54,545	16,314	29.9	2.4	16.6	1.0	8.5	3.4	31.9	68.1
Hallmark Insurance Co.	52,569	30,314	57.7	6.6	14.8	30.8	7.8	5.9	68.4	31.6
Hartford Fire Insurance Co.	50,115	5,272	10.5	6.2	20.2	2.1	13.4	3.3	44.2	55.8
Employers Mutual Liability Insurance Co.	47,269	0	0.0	6.1	9.6	13.0	17.5	4.5	50.7	49.3
Home Insurance Co.	46,651	4,819	10.4	4.7	17.3	2.3	9.3	3.3	36.9	63.1
Unigard Mutual Insurance Co.	36,127	799,619	2188.4	4.7	21.8	4.6	6.1	2.3	39.5	60.5
New Hampshire Insurance Co.	32,172	168,939	525.1	4.8	20.7	4.5	2.9	3.6	36.0	64.0
Horace Mann Insurance Co.	28,191	494	1.8	6.7	20.2	6.2	2.9	3.1	39.1	60.9
U.S.A.A.	27,927	0	0.0	5.4	1.4	20.4	5.0	3.7	35.9	64.1
Lumbermen's Underwriting Alliance	26,019	0	0.0	2.8	24.2	.1	2.8	2.1	32.2	67.8
Aetna Casualty & Surety Co.	25,514	177	0.7	3.1	21.0	2.1	10.4	3.2	39.7	60.3
American Motorists Insurance Co.	24,670	44,000	178.4	4.1	21.7	4.8	6.9	2.8	40.3	59.7
Total (95.4% of all business) - Average	$ 8,726,601	$ 6,515,280	74.6	4.8	17.4	4.1	6.8	4.2	37.3	62.7
Total All Companies	$ 9,147,766	$ 6,653,254	72.7							

[1] State Farm Fire & Casualty Figures

Insurance Report
1975-76
Company Expense
Exhibits 1975-76
R. Rainery 11/77

Exhibit III

Alaska Top 20 Homeowner Insurance Writers Experience -1972

Company	Earned Premium	Incurred Losses	Loss Ratio
State Farm Fire & Casualty	$1,253,712	$ 535,050	46.4
Insurance Company of N. America	1,217,965	698,785	57.4
Allstate Insurance Co.	661,041	171,395	25.9
Fireman's Fund Insurance Co.	474,810	261,092	55.0
Great American Insurance Co.	345,720	193,712	56.0
New Hampshire Insurance Co.	318,726	309,406	97.1
United States Fire Insurance Co.	274,054	292,116	106.3
U.S. Fidelity & Guaranty Co.	198,718	45,941	23.1
Pacific Insurance Co.	180,440	26,440	14.7
State Farm General Insurance Co.	140,097	116,655	82.8
Hartford Fire Insurance Co.	131,665	48,549	36.3
Home Insurance Co.	100,453	89,428	89.0
Employers Commercial Union Insurance Co.	99,352	12,224	12.3
American Motorists Insurance Co.	88,514	19,719	22.3
Consolidated Underwriters	83,912	79,840	95.1
All-America Insurance Co.	79,341	7,407	9.3
American Manufacturers Mutual Insurance Co.	63,205	23,386	37.0
Horace Mann Insurance Co.	57,766	7,196	12.5
United Services Automobile Association	51,585	3,127	6.1
Jefferson Insurance Co. of N.Y.	51,515	40,575	78.7
Total (95.7% of all business)	$5,879,391	$3,031,443	51.7
Total All Cos.	$6,141,678	$3,142,624	51.2

Alaska Top 20 Homeowner Insurance Writers Experience -1973

Company	Earned Premium	Incurred Losses	Loss Ratio
Insurance Co. of N. America	$ 1,730,074	$ 882,719	51.0
State Farm Fire & Casualty Co.	1,504,038	714,315	47.5
Allstate Insurance Co.	827,701	397,983	48.1
Fireman's Fund Insurance Co.	531,526	290,013	54.6
Great American Insurance Co.	356,662	87,193	24.5
Pacific Insurance Co.	321,576	79,770	24.8
U.S. Fire Insurance Co.	297,684	145,176	48.8
New Hampshire Insurance Co.	242,760	221,066	91.1
State Farm General Insurance Co.	170,878	84,780	49.6
Home Insurance Co.	117,720	1,964	1.7
American Motorist Insurance Co.	114,981	86,506	75.3
Hartford Fire Insurance Co.	110,566	93,645	84.7
U.S. Fidelity & Guaranty Co.	92,995	38,193	41.1
Providence Washington Insurance Co. of Alaska	90,029	13,036	14.5
Commercial Union Insurance Co.	85,846	17,144	20.0
United States Automobile Association	84,473	10,517	12.5
All-America Insurance Co	72,819	42,070	57.8
Horace Mann Insurance Co.	71,559	22,846	31.9
Jefferson Insurance Co.	64,249	705	1.1
Medallion Insurance Co.	53,727	4,482	8.3
Total (95.6% of all business)	$6,941,821	$3,234,205	46.6
Total All Cos.	$7,261,938	$3,459,525	47.6

Alaska Top 20 Homeowner Insurance Writers Experience - 1974

Company	Earned Premium	Incurred Losses	Loss Ratio
Insurance Co. of N. America	$1,989,768	$1,301,104	65.4
State Farm Fire & Casualty Co.	1,908,616	790,276	41.4
Allstate Insurance Co.	963,546	392,489	40.7
Pacific Insurance Co.	434,351	182,104	41.9
Fireman's Fund Insurance Co.	413,614	52,434	12.7
Providence Washington Insurance Co. of Alaska	396,569	162,147	40.9
Great American Insurance Co.	311,711	228,601	73.3
Industrial Indemnity Co. of Alaska	232,807	85,788	36.8
State Farm General Insurance Co.	210,921	81,137	38.5
Alaska Insurance Co.	162,813	48,825	30.0
U.S. Fire Insurance Co.	151,547	118,137	78.0
American Motorists Insurance	127,034	58,267	45.9
United Services Automobile Association	109,703	10,070	9.2
Horace Mann Insurance Co.	96,953	14,220	14.7
All-America Insurance Co.	88,072	93,906	106.7
Home Insurance Co.	86,054	1,394	1.6
New Hampshire Insurance Co.	81,976	163,375	199.3
Hartford Fire Insurance Co.	76,597	53,001	70.2
Nationwide Mutual Fire Insurance Co.	58,894	13,161	22.4
Jefferson Insurance Co.	44,079	2,019	4.6
Total (96.1% of all business)	$7,945,275	$3,853,343	48.5
Total All Cos.	$8,267,918	$4,059,395	49.1

Alaska Top 20 Homeowner Insurance Writers Experience -1975

Company	Earned Premium	Incurred Losses	Loss Ratio
State Farm Fire & Casualty Co.	$ 2,780,754	$1,772,812	63.8
Insurance Company of N. America	1,998,659	987,004	49.4
Allstate Insurance Co.	1,256,863	669,942	53.3
Pacific Insurance Co.	524,250	110,241	21.0
Great American Insurance Co.	508,978	301,391	59.2
Providence Washington Insurance Co. of Alaska	474,540	252,496	53.2
Fireman's Fund Insurance Co.	357,409	115,046	32.2
State Farm General Insurance Co.	340,605	189,930	55.8
Industrial Indemnity Co. of Alaska	323,875	287,365	88.7
North West Insurance Co.	172,537	36,710	21.3
Horace Mann Insurance Co.	162,072	58,242	35.9
Associated Indemnity Corp.	150,690	73,956	49.1
United Services Automobile Assoc.	129,002	78,475	60.1
New Hampshire Insurance Co.	126,238	11,467	9.1
American Motorists Insurance Co.	114,491	18,336	16.0
All-American Insurance Co.	111,898	5,668	5.1
Alaska Insurance Co.	73,651	28,549	38.6
Providence Washington Insurance Company	71,770	77,192	107.6
Nationwide Mutual Fire Insurance Co.	71,734	99,086	138.1
Hallmark Insurance Co.	50,291	27,833	55.3
Total (96.9% of all business)	$ 9,800,397	$5,201,741	53.1
Total all Cos.	$10,114,704	$5,367,178	53.1

Alaska Top 20 Homeowners Insurance Writers Experience - 1976

Company	Earned Premium	Incurred Losses	Loss Ratio
State Farm Fire & Casualty Co.	$ 3,986,852	$1,612,156	40.4
Insurance Company of N. America	2,221,764	871,765	39.2
Allstate Insurance Co.	1,675,553	542,182	32.4
Great American Insurance Co.	810,172	433,299	53.5
Pacific Insurance Co.	633,259	405,238	64.0
Fireman's Fund Insurance Co.	450,783	61,607	13.7
State Farm General Insurance Co.	435,382	222,740	51.2
Industrial Indemnity Co. of Alaska	358,856	55,292	15.4
Horace Mann Insurance Co.	290,458	344,964	118.8
Providence Washington Insurance Co. of Alaska	283,110	279,126	98.6
Associated Indemnity Corp.	269,610	109,970	40.9
North West Insurance Co.	215,419	182,028	84.5
United Services Automobile Assoc.	162,626	30,348	18.7
New Hampshire Insurance Co.	161,759	34,489	21.3
American Motorists Insurance Co.	135,515	43,558	32.1
Nationwide Mutual Fire Insurance Co.	76,054	6,282	8.3
All-American Insurance Co.	56,117	19,394	34.6
Hallmark Insurance Co.	52,863	2,374	4.5
Providence Washington Insurance Co.	43,922	127,285	289.8
Hartford Fire Insurance Co.	37,435	6,046	16.2
Total (97.2% of all business)	$12,357,509	$5,390,143	43.6
Total All Cos.	$12,715,688	$5,581,144	43.9

Alaska Top 20 Homeowners Insurance Writers Experience -

5 Years (1972-76)

Company	Earned Premium	Incurred Losses	Loss Ratio
State Farm Fire & Casualty Co.	$11,440,022	$ 5,474,609	47.9
Insurance Company of N. America	9,158,230	4,740,377	51.8
Allstate Insurance Co.	5,384,704	2,173,991	40.4
Great American Insurance Co.	2,333,133	1,244,196	53.3
Fireman's Fund Insurance Co.	2,228,142	780,192	35.0
Pacific Insurance Co.	2,094,376	803,793	38.4
State Farm General Insurance Co.	1,297,833	694,642	53.5
Providence Washington Insurance Co. of Alaska	1,244,240	706,805	56.8
Industrial Indemnity Co. of Alaska	941,357	431,353	45.8
New Hampshire Insurance Co.	931,467	739,803	79.4
U.S. Fire Insurance Co.	778,284	622,675	80.0
Horace Mann Insurance Co.	670,808	498,038	73.8
American Motorists Insurance Co.	580,535	226,466	39.0
United Services Automobile Assoc.	537,469	160,688	29.9
Associated Indemnity Corp.	469,471	193,343	42.2
All-American Insurance Co.	408,267	168,525	41.3
Hartford Fire Insurance Co.	405,290	233,531	57.6
U.S. Fidelity & Guaranty Co.	404,549	162,217	40.1
North West Insurance Co.	387,956	218,738	56.8
Home Insurance Co.	362,079	101,021	27.9
Total (92.1% of all business)	$42,066,220	$20,211,477	48.0
Total All Cos.	$45,689,532	$21,948,089	48.0

Insurance Report 1972-76
R. Rainery 10/77

Exhibit IV

1975 - ALASKA HOMEOWNERS INSURANCE
EXPERIENCE AND EXPENSES

Company	Earned Premiums	Incurred Losses	Loss Ratio	Loss Adjust. Expenses	Commission Brokerage	Other Acq. Field Super. Collection	General Expenses	Taxes Licenses Fees	Total Expenses Incurred	Resultant Permissible Loss Ratio
State Farm Fire & Casualty Co.	$2,780,754	$1,772,812	63.8%	6.9	20.8	4.5	4.8	2.8	39.8	60.2
Insurance Company of North America	1,998,659	987,004	49.4	7.7	21.2	5.1	8.1	3.3	45.4	54.5
Allstate Insurance Co.	1,256,863	669,942	53.3	8.2	9.5	8.0	4.0	3.8	33.5	66.5
Pacific Insurance Co.	524,250	110,241	21.0	7.0	25.3	3.2	6.6	2.6	41.5	58.5
Great American Insurance Co.	508,978	301,391	59.2	5.2	23.0	3.1	5.0	2.8	39.1	60.9
Providence Washington Insurance Co. of Alaska	474,540	252,496	53.2	10.0	19.6	4.8	7.4	2.6	44.4	55.6
Fireman's Fund Insurance Co.	357,409	115,046	32.2	8.3	21.1	5.2	7.7	3.2	45.5	54.5
State Farm General Insurance Co.	340,605	189,930	55.8	7.1	19.5	5.0	5.3	2.9	39.8	60.2
Industrial Indemnity Co. of Alaska	323,075	287,365	88.7	7.5	21.0	2.5	6.4	2.4	39.8	60.2
North West Insurance Co.	172,537	36,710	21.3	6.3	25.0	0.0	11.6	2.3	43.8	56.2
Horace Mann Insurance Co.	162,072	58,242	35.9	7.3	18.4	8.0	7.1	4.5	45.3	54.7
Associated Indemnity Corp.	150,690	73,956	49.1	8.3	21.1	5.2	7.7	3.2	45.5	54.5
U.S.A.A.	129,002	78,475	60.1	8.3	0.3	15.6	6.9	3.4	34.4	65.6
New Hampshire Insurance Co.	126,238	11,467	9.1	10.5	21.1	3.2	3.4	2.8	41.0	59.0
American Motorists Insurance Co.	114,491	18,336	16.0	6.8	26.1	8.6	5.0	3.2	50.0	50.0
All-America Insurance Co.	111,898	5,668	5.1	8.2	36.7	.8	.9	.7	47.3	52.7
Alaska Insurance Co.	73,651	28,549	38.6	10.5	21.1	3.2	3.4	2.8	41.0	59.0
Providence Washington Insurance Co.	71,770	77,192	107.6	10.0	19.6	4.8	7.4	2.6	44.4	55.6
Nationwide Mutual Fire Insurance Co.	71,734	99,086	138.1	8.6	14.5	12.6	6.0	3.9	45.6	54.4
Total (96.4% of all business) - average	$ 9,750,016	$5,173,908	53.1	7.5	19.7	5.1	6.0	3.0	41.3	58.7
Total All Companies	$10,114,704	$5,367,178	53.1							

1976 - ALASKA HOMEOWNERS INSURANCE
EXPERIENCE AND EXPENSES

Company	Earned Premiums	Incurred Losses	Loss Ratio	Loss Adjust. Expenses	Commission Brokerage	Other Acq. Field Super. Collection	General Expenses	Taxes Licenses Fees	Total Expenses Incurred	Resultant Permissible Loss Ratio
State Farm Fire & Casualty Co.	$ 3,986,852	$1,612,156	40.4%	6.4	20.6	5.3	3.9	3.0	39.2%	60.8%
Insurance Co. of North America	2,221,764	871,765	39.2	7.7	22.7	3.3	7.7	3.3	44.8	55.2
Allstate Insurance Co.	1,675,553	542,182	32.4	7.9	9.2	7.4	3.7	4.0	32.2	67.8
Great American Insurance Co.	810,172	433,299	53.5	4.2	21.3	4.0	5.3	2.0	37.2	62.7
Pacific Insurance Co.	631,259	405,238	64.0	5.5	23.2	2.7	6.9	2.3	40.6	59.4
Fireman's Fund Insurance Co.	450,783	61,607	13.7	7.9	20.9	5.2	7.4	3.2	44.6	55.4
State Farm General Insurance Co.	435,382	222,740	51.2	6.4	20.6	5.3	3.9	3.0	39.2	60.8
Industrial Indemnity Company of Alaska	358,856	55,292	15.4	7.0	22.3	2.0	5.4	2.8	39.5	60.5
Horace Mann Insurance Co.	290,458	344,964	118.8	8.3	21.5	6.7	3.1	3.3	42.9	57.1
Providence Washington Insurance Co. of Alaska	283,110	279,126	98.6	9.1	16.9	3.7	7.2	2.4	39.3	60.7
Associated Indemnity Corp.	269,610	109,970	40.9	7.9	20.9	5.2	7.4	3.2	44.6	55.4
North West Insurance Co.	215,419	182,028	84.5	12.6	17.8	0.0	3.6	1.6	35.7	64.3
U.S.A.A.	162,626	30,348	18.7	7.7	0.3	19.9	2.5	3.8	34.2	65.8
New Hampshire Insurance Co.	161,759	34,469	21.3	10.0	20.0	4.6	3.5	2.6	40.7	59.3
American Motorists Insurance Co.	135,515	43,558	32.1	5.6	26.1	4.0	5.1	2.4	43.2	56.8
Nationwide Mutual Fire Insurance Co.	76,054	6,202	8.3	0.6	9.5	12.1	6.4	4.4	41.0	59.0
All America Insurance Co.	56,117	19,394	34.6	4.6	39.1	1.3	1.8	.7	47.5	52.6
Hallmark Insurance Co.	52,061	2,374	4.5	15.1	45.4	32.7	6.6	5.1	104.9	(4.9)
Providence Washington Insurance Co.	43,922	127,285	289.8	9.1	16.2	3.7	7.2	2.4	39.3	60.7
Hartford Fire Insurance Co.	37,135	6,048	16.2	7.6	21.2	3.0	7.4	3.3	42.5	57.5
Total (97.2% of all business) - average	$12,357,509	$5,390,143	43.6	7.1	19.5	5.1	5.1	3.1	39.9	60.1
Total All Companies	$12,715,088	$5,581,144	43.9							

Insurance Report 1975-76
Company Expense Exhibits 1975-76
R. Rainery 11/77

Exhibit V

Companies Reporting Fire Insurance Experience
by Dwelling Commercial Categories

1972

Company	Dwelling Fire Earned Premium	Dwelling Fire Incurred Losses	Dwelling Fire Loss Ratio	Commercial Fire Earned Premium	Commercial Fire Incurred Losses	Commercial Fire Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
Continental Insurance Group	229,134	68,826	30.0	417,428	104,065	24.9	646,562	172,891	26.7
Highlands Insurance Co.	17,714	0	0.0	468,926	502,784	107.2	486,640	503,784	103.3
Fireman's Fund Insurance Cos.	-	-	-	464,987	206,303	44.4	464,987	206,303	44.4
Hartford Fire Insurance Co.	107,736	43,741	40.6	230,557	92,223	40.0	338,293	135,994	40.2
Great American Insurance Co.	7,820	0	0.0	322,791	230,795	71.5	330,611	230,795	69.8
United States Fidelity & Guaranty Co.	111,608	35,289	31.6	202,320	108,008	53.4	313,928	143,837	45.8
St. Paul Insurance Cos.	-	-	-	66,097	21,914	33.2	66,097	21,914	33.2
Mission Insurance Co.	-	-	-	55,222	4,068	7.4	55,222	4,068	7.4
American Home Assurance Co.	156	0	0.0	40,403	30,088	74.2	40,559	30,088	74.2
National Union Fire Insurance Co.	-	-	-	3,458	0	0.0	3,458	0	0.0
Industrial Indemnity Group	-	-	-	624	0	0.0	624	0	0.0
Total (37.5% of all buisness)	474,168	147,856	31.2	2,272,813	1,300,248	57.2	2,746,981	1,448,114	52.7
Total All Companies							7,329,884	3,480,847	47.5

1973

Company	Dwelling Fire Earned Premium	Dwelling Fire Incurred Losses	Dwelling Fire Loss Ratio	Commercial Fire Earned Premium	Commercial Fire Incurred Losses	Commercial Fire Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
Continental Insurance Group	249,177	80,736	32.4	331,516	61,904	18.7	580,693	142,640	24.6
Highlands Insurance Co.	4,804	0	0.0	550,649	32,954	6.0	555,453	32,954	5.9
Industrial Indemnity Group	137,623	64,552	46.9	361,034	(20,881)	(5.8)	498,657	43,671	8.8
Fireman's Fund Insurance Co.	-	-	-	408,379	61,937	15.2	408,379	61,937	15.2
Alaska Insuarnce Co.	65,379	17,265	26.4	208,711	45,205	21.7	274,090	62,460	22.8
Mission Insurance Co.	-	-	-	263,222	1,231,806	468.0	263,222	1,231,806	468.0
Great American Insurance Co.	27,292	26,002	95.3	230,200	85,573	37.2	257,492	111,575	43.3
Hartford Fire Insurance Co.	50,823	2,897	5.7	155,176	90,315	58.0	205,999	93,212	45.9
U.S. Fidelity & Guranty Co.	70,352	80,775	114.8	124,980	24,699	19.8	195,332	105,474	54.0
Atlas Assurance Co.	5,265	2,400	45.6	94,823	139	0.1	100,088	2,539	2.5
St. Paul Insurance Cos.	-	-	-	85,369	985	1.2	85,369	985	1.2
American Home Assurance Co.	88	0	0.0	24,066	0	0.0	24,154	0	0.0
National Union Fire Insurance Co.	-	-	-	5,715	162	2.8	5,715	162	2.8
Total (43.8% of all business)	610,803	274,627	45.0	2,843,840	1,614,798	56.8	3,454,743	1,889,415	54.7
Total All Companies							7,893,318	2,721,742	34.4

1974

Company	Dwelling Fire Earned Premium	Dwelling Fire Incurred Losses	Dwelling Fire Loss Ratio	Commercial Fire Earned Premium	Commercial Fire Incurred Losses	Commercial Fire Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
Industrial Indemnity Group	258,011	0	0.0	760,099	149,502	19.7	1,018,110	149,502	14.7
Mission Insurance Co.	-	-	-	869,865	19,193	2.2	869,865	19,193	2.2
Continental Insurance Group	238,583	141,846	59.4	313,676	41,485	13.2	552,259	183,331	33.2
Alaska Insurance Co.	151,365	28,039	18.5	380,619	154,578	40.6	531,984	182,617	34.3
Highlands Insurance Co.	10,603	0	0.0	501,183	190,904	38.1	511,786	190,984	37.3
Fireman's Fund Insurance Co.	21,070	0	0.0	306,147	35,121	11.5	327,217	35,121	10.7
Great American Insurance Co.	38,529	0	0.0	143,754	60,704	42.2	182,283	60,704	33.3
Atlas Assurance Co.	13,744	0	0.0	126,842	104,000	82.0	140,586	104,000	74.0
Hartford Fire Insurance Co.	40,894	(5,194)	(12.7)	93,906	11,269	12.0	134,800	6,075	4.5
St. Paul Insurance Cos.	-	-	-	117,076	6,815	5.8	117,076	6,815	5.8
U.S. Fidelity & Guaranty Co.	50,640	2,418	4.8	56,930	820	1.4	107,570	3,238	3.0
American Home Assurance Co.	63	0	0.0	16,130	85,000	527.0	16,193	85,000	525.0
National Union Fire Insurance Co.	-	-	-	9,254	0	0.0	9,254	0	0.0
Total (53.4% of all business)	823,502	167,109	20.3	3,695,481	859,471	23.3	4,518,983	1,026,580	22.7
Total All Companies							8,467,152	1,786,314	21.0

1975

Company	Dwelling Fire Earned Premium	Dwelling Fire Incurred Losses	Dwelling Fire Loss Ratio	Commercial Fire Earned Premium	Commercial Fire Incurred Losses	Commercial Fire Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
Industrial Indemnity Group	269,187	0	0.0	861,455	450,414	52.3	1,130,642	450,414	39.8
Alaska Insurance Co.	260,720	16,063	6.2	737,443	274,036	37.2	998,163	290,099	29.1
Continental Insurance Group	300,804	143,834	47.8	382,782	839,267	219.3	683,586	983,101	143.8
Highlands Insurance Co.	30,750	0	0.0	356,595	78,374	22.0	387,345	78,374	20.2
Fireman's Fund Insurance Cos.	36,514	0	0.0	302,463	21,034	7.0	338,977	21,034	6.2
Great American Insurance Co.	70,000	75,000	107.1	226,429	28,154	12.4	296,429	103,154	34.8
Mission Insurance Co.	-	-	-	166,385	30,828	18.5	166,385	30,828	18.5
National Union Fire Insurance Co.	-	-	-	90,859	50,000	55.0	90,859	50,000	55.0
U.S. Fidelity & Guaranty Co.	53,666	18,072	33.7	36,502	16,933	46.3	90,168	35,005	38.8
Hartford Fire Insurance Co.	19,768	95,203	481.6	41,706	5,005	12.0	61,474	100,208	163.0
Atlas Assurance Co.	8,435	1,800	21.3	45,800	33,609	73.4	54,235	35,409	65.3
American Home Assurance Co.	30	0	0.0	3,699	0	0.0	3,729	0	0.0
St. Paul Insurance Cos.	-	-	-	129,516	51,995	40.1	129,516	51,995	40.1
Total (51.8% of all business)	1,049,874	349,972	33.3	3,381,634	1,879,649	55.6	4,431,508	2,229,621	50.3
Total All Companies							8,553,533	4,360,149	51.0

1976

Company	Dwelling Fire Earned Premium	Dwelling Fire Incurred Losses	Dwelling Fire Loss Ratio	Commercial Fire Earned Premium	Commercial Fire Incurred Losses	Commercial Fire Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
Alaska Insurance Co.	309,099	3,470	1.1	1,175,102	222,707	19.0	1,484,201	226,177	15.2
Industrial Indemnity Group	234,645	115,055	49.0	658,332	227,981	34.6	892,977	343,036	38.4
Continental Insurance Co.	282,470	218,666	77.4	335,744	263,472	78.5	618,214	482,138	78.0
Great American Insurance Co.	97,000	26,000	26.8	358,194	185,122	51.7	455,194	211,122	46.4
Fireman's Fund Insurance Co.	43,587	13,500	31.0	361,975	109,264	30.2	405,562	122,764	30.3
Mission Insurance Co.	-	-	-	292,384	449	0.2	292,384	449	0.2
Highlands Insurance Co.	13,152	0	0.0	222,219	25,063	11.3	235,371	25,063	10.6
St. Paul Insurance Cos.	-	-	-	195,997	28,888	14.7	195,997	28,888	14.7
Atlas Assurance Co.	75,527	379	0.5	114,395	10,150	8.9	189,922	10,529	5 5
National Union Fire Insurance Co.	-	-	-	105,434	1,030	1.0	105,434	1,030	1.0
United States Fidelity & Guaranty Co.	48,472	11,431	23.8	38,996	(437)	(1.1)	87,468	10,994	12.6
Hartford Fire Insurance Co.	33,138	6,860	20.7	17,224	689	4.0	50,362	7,549	15.0
American Home Assurance Co.	-	-	-	1,592	0	0.0	1,592	0	0.0
Total (54.8% of all business)	1,137,090	395,451	34.8	3,877,588	1,074,378	27.6	5,014,678	1,469,739	29.3
Total All Companies							9,147,766	6,653,254	72.7

1972-76 TOTALS

Industrial Indemnity Group	899,466	179,607	20.0	2,641,544	807,016	30.6	3,541,010	986,623	27.9
Alaska Insurance Co.	786,563	64,837	8.2	2,501,875	696,526	27.8	3,288,438	761,363	23.2
Continental Insurance Co.	1,300,168	653,908	50.3	1,781,146	1,310,193	73.6	3,081,314	1,964,101	63.7
Highlands Insurance Co.	77,023	0	0.0	2,099,572	830,159	39.5	2,176,595	830,159	38.1
Fireman's Fund Insurance Cos.	101,171	13,500	13.3	1,843,951	433,659	23.5	1,945,122	447,159	23.0
Mission Insurance Co.	-	-	-	1,647,078	1,286,344	78.1	1,647,078	1,286,344	78.1
Great American Insurance Co.	240,641	136,421	56.7	1,281,368	590,348	46.1	1,522,009	726,769	47.8
United States Fidelity & Guaranty Co.	334,738	147,985	44.2	459,728	150,023	32.6	794,466	298,008	37.5
Hartford Fire Insurance Co.	252,359	143,507	56.9	538,569	199,501	37.0	790,928	343,008	43.4
St. Paul Insurance Cos.	-	-	-	624,694	110,597	17.7	624,694	110,597	17.7
Atlas Assurance Co.	102,971	4,579	4.4	381,860	147,898	38.7	484,831	152,477	31.4
National Union Fire Insurance Co.	-	-	-	214,720	51,192	23.8	214,720	51,192	23.8
American Home Assurance Co.	337	0	0.0	85,890	115,088	134.0	86,235	115,088	133.5
Total (48.8% of all business)	4,095,100	1,344,344	32.8	16,101,995	6,728,544	41.8	20,197,440	8,072,888	40.0
Total All Companies							41,391,653	19,002,206	45.9

Information submitted by companies
R. Rainery 11/77

Exhibit VI

ALASKA HOMEOWNERS INSURANCE EXPERIENCE

Companies Reporting by Zone

1972

Company	Zone 1* Earned Premium	Zone 1* Incurred Losses	Zone 1* Loss Ratio	Zone 2* Earned Premium	Zone 2* Incurred Losses	Zone 2* Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
State Farm Fire & Casualty Co.	$ 91,877	$ 32,227**	35.1%	$ 1,167,835	$ 613,729**	52.6%	$ 1,259,712	$ 645,956**	51.3%
Insurance Co. of North America	187,743	84,873	45.2	1,018,899	702,180	68.9	1,206,642	787,053	65.2
Allstate Insurance Co.	13,263	6,197	46.7	639,067	188,463	29.5	652,330	194,660	29.8
State Farm General Insurance Co.	6,450	524**	8.1	97,997	119,209**	121.6	104,447	119,733**	114.6
Total (52.5% of all business)	$299,333	$ 123,821	41.4%	$ 2,923,798	$ 1,623,581	55.5%	$ 3,223,131	$ 1,747,402	54.2%
Total All Companies							$ 6,141,678	$ 3,142,624	51.2%

1973

Insurance Co. of North America	290,954	110,104	37.3	1,431,120	786,242	54.9	1,722,074	896,346	52.0
State Farm Fire & Casualty Co.	124,787	19,525**	15.6	1,379,301	757,489**	54.9	1,504,088	777,014**	51.7
Allstate Insurance Co.	22,325	10,605	47.5	804,146	454,661	56.5	826,471	465,266	56.3
State Farm General Insurance Co.	6,610	35**	0.5	112,662	49,451**	43.9	119,272	49,486**	41.5
Total (57.4% of all business)	444,676	140,269	31.5	3,727,229	2,047,843	54.9	4,171,905	2,188,112	52.4
Total All Companies							7,261,938	3,459,525	47.6

1974

Insurance Co. of North America	382,187	615,228	160.9	1,603,204	739,633	16.1	1,985,391	1,354,861	68.2
State Farm Fire & Casualty Co.	168,223	40,798**	24.3	1,740,393	816,274**	46.9	1,908,616	857,072**	44.9
Allstate Farm Fire & Casualty Co.	28,329	5,081	17.9	923,884	447,384	48.4	952,263	452,465	47.5
State Farm General Insurance Co.	6,388	1,213**	19.0	95,444	46,800**	49.0	101,832	48,013**	47.1
Total (59.8% of all business)	585,127	657,747	112.4	4,362,925	2,049,662	47.0	4,948,102	2,707,409	54.7
Total of All Companies							8,267,918	4,059,395	49.1

1975

Company	Zone 1* Earned Premium	Zone 1* Incurred Losses	Zone 1* Loss Ratio	Zone 2* Earned Premium	Zone 2* Incurred Losses	Zone 2* Loss Ratio	Total Earned Premium	Total Incurred Losses	Total Loss Ratio
State Farm Fire & Casualty Co.	$ 232,030	$ 101,323**	43.7%	$ 2,548,724	$ 1,808,002**	70.9%	$ 2,780,754	$ 1,909,325**	68.7%
Insurance Co. of North America	421,583	287,524	68.2	1,571,050	581,521	37.0	1,992,633	869,045	43.6
Allstate Insurance Co.	62,055	11,028	17.8	1,081,687	760,768	70.3	1,143,662	771,706	67.5
State Farm General Insurance Co.	7,252	947**	13.1	74,593	33,056	44.3	81,845	34,003**	41.5
Total (59.3% of all business)	722,920	400,822	55.4	5,275,974	3,183,347	60.3	5,998,894	3,584,169	59.7
Total All Companies							10,114,704	5,367,178	53.1

1976

State Farm Fire & Casualty Co.	307,126	228,823**	74.5	3,679,727	1,556,547**	42.3	3,986,853	1,785,370**	44.8
Insurance Co. of North America	468,057	65,953	14.1	1,746,945	886,528	50.7	2,215,802	952,481	43.2
Allstate Insurance Co.	117,485	11,660	9.9	1,347,125	615,836	45.7	1,464,610	627,496	42.3
State Farm General Insurance Co.	1,268	538**	42.4	18,876	22,448**	118.9	20,144	22,986	114.1
Total (60.5% of all business)	894,736	306,974	34.3	6,792,673	3,081,359	45.4	7,687,409	3,388,33	44.1
Total All Companies							12,715,088	5,581,144	43.9

1972-1976

State Farm Fire & Casualty Co.	924,043	422,696**	45.7	10,615,980	5,552,041**	52.8	11,440,023	5,974,737**	52.2
Insurance Co. of North America	1,751,324	1,163,602	66.2	7,371,218	3,696,104	50.1	9,122,542	4,859,786	53.3
Allstate Insurance Co.	243,507	44,571	18.3	4,795,029	2,467,112	51.4	5,039,336	2,511,683	49.8
State Farm General Insurance Co.	27,968	3,257**	11.6	399,572	270,964**	67.8	427,540	274,221**	64.1
Total (57.0% of all business)	2,946,752	1,634,206	55.6	23,082,599	11,986,221	51.9	26,029,351	13,620,427	52.3
Total All Companies							45,689,532	21,948,089	48.0

* Zone 1 - Same for all companies (all of State East of 141st meridian of West longitude)

* Zone 2 - State Farm Zone 2 (all of remainder of State except zip code areas 99701-99799)
State Farm Zone 3 (zip code areas 99701-99799)
Insurance Co. of North America Zone 2 (Matanuska-Susitna and Greater Anchorage Area Boroughs and Kodiak Island)
Insurance Co. of North America Zone 3 (all of remainder of State)

** Includes Loss Adjustment Expenses.

Information submitted by companies
R. Rainery 9/77

Exhibit VII

ISO FIRE RATES

District I
Class D - Dwelling Building - Owner Occupied

Amount of Insurance	Protection Class 5	6	7	8	9	10
$ 40,000	173	198	267	338	422	458
$ 70,000	303	347	467	591	738	801
$100,000	433	496	667	844	1055	1144

District I
Class D - Dwelling Contents

Amount of Insurance	Protection Class 5	6	7	8	9	10
$ 20,000	91	104	139	174	216	229
$ 35,000	160	183	243	305	379	400
$ 50,000	228	261	347	436	541	572

District II
Class D - Dwelling Building - Owner Occupied

Amount of Insurance	Protection Class 3	4	5	6	7	8	9	10
$ 40,000	173	198	224	259	316	438	549	595
$ 70,000	303	347	391	454	605	767	961	1042
$100,000	433	496	559	648	864	1095	1373	1488

District II
Class D - Dwelling Contents

Amount of Insurance	Protection Class 3	4	5	6	7	8	9	10
$ 20,000	92	104	117	135	178	224	280	298
$ 35,000	160	183	205	235	312	392	489	521
$ 50,000	229	261	293	337	445	559	699	744

Rates compiled from manual on file with the Division of Insurance and confirmed by ISO.
R. Rainery 11/77

Exhibit VIII

Homeowners Insurance Rates

Policy - HO - 3 (or nearest equivalent)

Construction - Frame

Premium - Annual ($100 deductible)

1. Home Insured for $ 40,000
2. Home Insured for $ 70,000
3. Home Insured for $ 100,000

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1. Anchorage

Company	Protection Class 5	8	9	10
Fireman's Fund	$ 278	$ 306	$ 487	$ 556
Providence Washington of Ak.	167	199	341	389
Horace Mann	202	315	559	559
Allstate	183	292	360	360
Industrial Indemnity Co. of Ak.	263	437	629	629
Insurance Co. of North America	250	414	550	550
State Farm Fire & Casualty	204	308	424	424
State Farm General	294	456	559	559
Great American	300	467	572	572
Pacific	278	306	487	556

1. Fairbanks

Company	Protection Class 4	5	8	10
Fireman's Fund	278	278	306	556
Providence Washington of Ak.	167	167	199	389
Horace Mann	200	218	340	559
Allstate	166	183	292	360
Industrial Indemnity Co. of Ak.	242	263	437	629
Insurance Co. of North America	284	302	498	662
State Farm Fire & Casualty	204	223	337	526
State Farm General	294	323	502	699
Great American	346	375	583	716
Pacific	278	278	306	556

1. Juneau

Company	otection Class 5	6	7	10
Fireman's Fund	278	278	306	556
Providence Washington of Ak.	167	181	199	389
Horace Mann	202	218	264	559
Allstate	157	166	199	292
Industrial Indemnity of Ak.	263	285	437	629
Insurance Co. of North America	220	252	300	484
State Farm Fire & Casualty	180	187	218	308
State Farm General	257	267	316	456
Great American	300	324	392	572
Pacific	278	278	306	556

2. Anchorage

Company	Protection Class 5	8	9	10
Fireman's Fund	556	613	975	1,112
Providence Washington of Ak.	334	398	683	778
Horance Mann	312	406	863	863
Allstate	312	502	625	625
Industrial Indemnity of Ak.	500	826	1,188	1,188
Insurance Co. of North America	463	766	1,018	1,018
State Farm Fire & Casualty	334	508	703	703
State Farm General	558	864	1,057	1,057
Great American	566	882	1,081	1,081
Pacific	556	613	975	1,112

2. Fairbanks

Company	Protection Class 4	5	8	10
Fireman's Fund	556	556	613	1,112
Providence Washington of Ak.	334	334	398	778
Horace Mann	309	337	525	863
Allstate	282	312	502	625
Industrial Indemnity of Ak.	459	500	826	1,188
Insurance Co. of North America	525	559	921	1,225
State Farm Fire & Casualty	334	366	557	875
State Farm General	558	614	950	1,321
Great American	653	709	1,102	1,352
Pacific	556	556	613	1,112

2. Juneau

Company	Protection Class 5	6	7	10
Fireman's Fund	556	556	613	1,112
Providence Washington of Ak.	334	361	398	778
Horace Mann	312	337	407	863
Allstate	270	282	339	502
Industrial Indemnity of Ak.	500	571	826	1,188
Insurance Co. of North America	440	466	555	895
State Farm Fire & Casualty	283	295	345	508
State Farm General	485	507	598	864
Great American	566	612	740	1,081
Pacific	556	556	613	1,112

3. Anchorage

Company	Protection Class 5	8	9	10
Fireman's Fund	823	910	1,445	1,650
Providence Washington of Ak.	494	592	1,012	1,155
Horace Mann	456	714	1,271	1,271
Allstate	442	713	889	889
Industrial Indemnity of Ak.	734	1,216	1,747	1,747
Insurance Co. of North America	688	1,135	1,513	1,513
State Farm Fire & Casualty	485	741	902	902
State Farm General	822	1,272	1,555	1,555
Great American	831	1,297	1,591	1,591
Pacific	823	910	1,445	1,650

3. Fairbanks

Company	Protection Class 4	5	8	10
Fireman's Fund	823	823	910	1,650
Providence Washington of Ak.	494	494	592	1,155
Horace Mann	453	493	771	1,271
Allstate	398	442	713	889
Industrial Indemnity of Ak.	675	734	1,216	1,747
Insurance Co. of North America	781	831	1,370	1,821
State Farm Fire & Casualty	485	532	814	1,124
State Farm General	822	904	1,399	1,994
Great American	959	1,045	1,618	1,988
Pacific	823	823	910	1,650

3. Juneau

Company	Protection Class 5	6	7	10
Fireman's Fund	823	823	910	1,650
Providence Washington of Ak.	494	535	592	1,155
Horace Mann	456	49[illegible]	567	1,271
Allstate	383	398	480	713
Industrial Indemnity of Ak.	734	841	1,216	1,747
Insurance Co. of North America	605	693	825	1,331
State Farm Fire & Casualty	387	404	474	741
State Farm General	713	747	880	1,272
Great American	831	900	1,088	1,591
Pacific	823	823	910	1,650

Rates compiled from manuals on file with the Division of Insurance and confirmed by companies.
R. Rainery 11/77

Exhibit IX

ISO Premium Relativities - Dwelling Fire - Frame Bldg

Protection Class	Statewide Current Relativities	Statewide Indicated Relativities
3	.773	1.079
4	.884	1.000
5	1.000	1.000
6	1.155	1.000
7	1.542	.836
8	1.956	.836
9	2.447	1.195
10	2.654	1.348

ISO Fire filing of June 7, 1977

Exhibit X

ISO Dwelling Experience Compilation - Protection
Standard Fire Policy

	Protected (Classes 1-8)			Unprotected (Classes 9 & 10)		
	Earned Premiums	Incurred Losses	Loss Ratio	Earned Premiums	Incurred Losses	Loss Ratio
1971	474,991	289,125	60.9	508,446	168,957	33.2
1972	456,014	205,009	45.0	526,474	170,967	32.5
1973	448,655	166,816	37.2	506,598	96,752	19.1
1974	510,136	197,089	38.6	587.118	84,009	14.3
1975	667,871	175,513	26.3	647,324	186,553	28.8
TOTAL	2,557,667	1,033,552	40.4	2,/75,960	707,238	25.5

ISO 1976 Statistical Report, Personal Lines

Exhibit XI

Market Concentration Share

Alaska Homeowners Insurance

	No. of Cos.	% of market share
1972	5	64.5
1973	5	68.2
1974	5	69.1
1975	5	69.9
1976	5	73.4

Countrywide

	No. of Grps	% of market share
1976	26	64.8

Alaska Fire Insurance

	No. of Cos.	% of market share
1972	10	69.1
1973	10	58.7
1974	10	57.1
1975	10	59.6
1976	10	62.6

Countrywide

	No. of Grps	% of market share
1976	26	59.0

NAIC Competition Study, September 30, 1977
Insurance Report 1972-76
R. Rainery November 22, 1977

Exhibit XII

Alaska Fire Insurance Written Premiums

	Total (Admitted and Surplus)	Surplus	Surplus as % of Total
1972	$8,817,563	$976,882	11.1
1973	8,521,343	648,959	7.6
1974	9,523,474	965,537	10.1
1975	10,639,320	2,865,449	26.9
1976	13,796,608	4,522,479	32.8
Totals	$51,298,308	$9,979,306	19.5

Insurance Report 1972-76
1/21/77 R. Rainery

HB
655

file HB 655

CHARLES POOL & ASSOCIATES, INC.
CONSULTING ENGINEERS & SURVEYORS
1225 Tongass Avenue
Ketchikan, Alaska 99901

(907) 225-6626

May 11, 1978

Honorable Terry Gardiner
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

We are writing to voice our opposition to HB 655, a bill for registration of Landscape Architects.

As presently written, this bill would license landscape architects to perform engineering and land surveying services which most landscape architects are manifestly unqualified to perform.

While we can see the need for regulating landscape architects and recognize the professional nature of their work, this bill would be akin to licensing chiropractors to do brain surgery.

We urge you to vote against this bill and to encourage your colleagues to do likewise.

Sincerely,

CHARLES POOL & ASSOCIATES, INC.

By: James J. Lutz, P.E.
Vice President

JJL:adp

Alaska Society of Professional Engineers

DONALD R. DENT JR. P.E.
National Director
4135 Hood Court
Anchorage, Alaska 99503

Tel.(907) 277-8027
(907) 272-5451

March 16, 1978

Representative Terry Gardner
Chairman House Judiciary Committee
Pouch V
Juneau, AK 99811

Reference: HB 655

Subject: Registration of Landscape Architects

Dear Representative Gardner:

The Engineering groups, mostly in private practice, object to this piece of legislation, on the grounds that it will allow an infringement of a non-qualified group of people to practice within areas considered in Alaska and other States as Architecture, Civil Engineering and Land Surveying, as well as, leave the door open for other infringements on platting and planning processes, at the local level, which also effect the Land Surveying Professional.

In the proposed HB 655, under Section 30 (page 13) "practice of landscape architecture", the definition is vague enough that functions which are part of the practice of Architecture, Engineering and Surveying could be infringed with impunity, as is stated on line 8, "...but not limited to..." Specific infringements (lines 8 thru 11) "... consultation, investigation, research, planning, design, preparation of drawings, specifications and contract documents and responsible supervision or construction management in connection with the development of land;" (note semi-colon at end of this sentence.) At first reading it appears that the next sentence "to the extent,.." etc. is part of the aforementioned, but it is not. Lines 8 thru 13 is carte blanche license to do any or all A/E or L.S. work involved in land development.

Lines 12 thru 22 name specifics which are infringements.

Line 13 - "... or improvement of natural land features,..." A/E functions.
Line 14 - "... naturalistic or aesthetic values, or determination of proper land use..." A/E and L.S. Functions.
Line 16 - "... approaches for buildings and structures or other improvements..." This involves paving, parking, traffic pattern, sight distances, screening - "or other improvements" include sewer, water, power, site preparation, grading, etc. These are Engineering Functions.
Line 17 thru 20 - Please refer - This is a clear statement of supposed ability of landscape architects to do hydraulic and hydrologic engineering, as well as site engineering and soils analysis. These are Engineering Functions.

Line 22 thru 24 - This states that landscape architecture does not include "design of buildings or structures with separate and self-contained purposes such as are ordinarily included in the practice of architecture or engineering." This implies that architecture and engineering are only concerned with design of buildings and structures. That statement is not fact. Civil Engineering also includes, but is not limited to, studies, activities and designs in connection with fixed works for irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, all public works improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, soils and soils mechanics, hydraulics, hydrology, foundations, framed and homogeneous structures, and bridges.

If, from the impression given me by other legislators, it is a foregone conclusion this bill will pass regardless of objections, we feel that the definition would be better written as:

> "(15)'practice of landscape architecture' means professional service or creative work, and adequate performance of which requires landscape architectural education, training and experience in work of consultation, investigation, research, planning, preparation of drawings and contract documents concerned with the preservation, enhancement or improvement of natural land features with naturalistic and aesthetic values, involved with ground cover and plantings, and determination of environmental problems of land. It does not include work which is defined by statute or usual and common practice of Architecture, Engineering or Land Surveying."

From the information received by us so far, Landscape Architectural Education does not include architecture or engineering of a comprehensive nature to warrant the Landscape Architects being granted the right to practice in the areas of Architecture or Engineering, or to slightly overlap.

Under Section 1 of HB 655, (page 1) the landscape architects are requesting two representatives on the Board of Registration. This is a large representation for an unknown number of people, particularly when they have little history or professional background in Alaska. At a later date with that professional history and background, and sufficient numbers, at least one representative on the board could be a reasonable request. Following is a listing of the present number of each of the present registration catagories and their representation on the board.

Catagory	Registrants	Representatives
Civil Engineers	1097	2
*Land Surveyors	588	1
Architects	295	3
Mechanical Engineers	185	1
Electrical Engineers	170	1
Mining Engineers	74	1
Petroleum Engineers	28	0
Chemical Engineers	10	0
*Structural Engineers	3	0
*Sanitary Engineers	1	0

*276 Land Surveyors are dual-licensed Civil and Mining Engineers. The Structural and Sanitary Engineers were licensed in the early 1950's, but these catagories are not licensed specifically now.

The purpose for three architects on the Board is that three persons must make the evaluation of architectural applicants. Evaluation of other catagories are done the same way - three reviews. The Civil Engineering and Land Surveyor representatives are dual-licensed CE's and L.S.'s.

If the board were increased to eleven, it would be more equitable if one Civil Engineer were returned to the board together with one new catagory. A petroleum Engineer would be more important, overall, to the State and the public.

The purpose of AS 08.48 is to "safeguard life, health and property, and to promote the general welfare of the public" (ch. 179 SLA 1972). We do not feel that Landscape Architecture addresses the life, health, property and general welfare of the public, other than the aesthetic or artistic values, which are secondary. Aesthetics are not vital to the survival of the public, as are practical and functional works involved in the Architectural or Engineering practice. These latter are Primary.

Section 9 (08.48.196) (page 4) provide the Landscape Architects immediate access to registration in Alaska without examination or fulfilling such requirements such as arctic or permafrost engineering treatise and/or education, which is extremely important to the life, health, and welfare of the public in Alaska. Lines 9 thru 11 (page 4) would allow registration of Landscape Architects with less than the minimum 8 years education and experience, or 16 hours written examination, as required for the design professions.

We do not feel that another level of registration is warranted at this time. If it is in the mind of the Legislature to grant this level of registration, we do not support the concept of allowing the registration at lesser standards than

are required for the design professionals nor to be allowed by statute to extend their practice into Architectural or Engineering areas for which they do not have competent educational and experience backgrounds.

The Landscape Architects were advised several months ago by the Board of Registration to contact the Architect and Professional Engineering Societies in order to formalize a piece of legislation acceptable to all parties. They chose not to, so now the legislators must wrestle with divergent views from all sides. This certainly wastes a lot of time.

More as an aside from the foregoing, hoping you may be able to answer this for us, we are curious how a group of, purported, 60 Landscape Architects, very few of whom have been in Alaska for three years, appear to have more political backing and support, than the approximately 10,000 voters who are directly involved in the Architectural, Engineering and Land Surveying Professions.

We would appreciate your consideration of our views during your deliberations on this Bill.

Sincerely,

ALASKAN SOCIETY OF PROFESSIONAL ENGINEERS

Donald R. Dent, Jr., P.E., L.S.
Legislative Chairman

DRD/sw

HOUSE JUDICIARY

GARDINER	124	Miles	208
Brown	207 A	Rudd	625
Dankworth	203A	Eliason	201A
Carpenter	202A		

SENATE COMMERCE

BRADLEY	207	Sumner	104A
Poland	120	Ray	103
Hackney	105A		

HOUSE STATE AFFAIRS

BRADLEY	123	Nakak	103A
Mckinnon	628	Miles	208
Dankworth	203A	Kelly	211A
Lethin	203A		

LAII 2189 12.09 JA01 0018 12.09 03/07/73

TO SEN COMMERCE COMMITTEE
ATTN: ALL MEMBERS

TO H. STATE AFFAIRS COMMITTEE
ATTN: ALL MEMBERS

TO H. JUDICIARY COMMITTEE
ATTN: ALL MEMBERS

I URGE YOUR SUPPORT FOR HB 655 AND SB 416.

FROM GORDEN SCHLOSSER
3105 W 34 APT 17
ANCH., AK 99503
TELE: 272-2797

EOM
CBK/EOM

W. J. WELLENSTEIN • ARCHITECT • A.I.A., INC.
325 BARROW STREET • ANCHORAGE, ALASKA 99501
PHONE (907) 279-3941 • 277-6254

MARCH 1. 1978

REPRESENTATIVE CLARK GRUENING
POUCH V
JUNEAU. ALASKA 99811

TO CLARK:

RE YOUR LETTER OF FEBRUARY 27. 1978.

PERSONALLY I AM AGAINST THE REGISTRATION OF LANDSCAPE ARCHITECTS. THEIR PROFESSION HAS NOTHING TO DO WITH THE PROTECTION OF THE PUBLIC HEALTH, WELFARE OR SAFETY.

IF ANY PROFESSION SHOULD BE LICENSED NEXT IT SHOULD BE THE STRUCTURAL ENGINEERS.

ADDITIONALLY, THE ARCHITECTS, ENGINEERS AND LAND SURVEYORS BOARD REGULATIONS ARE PRESENTLY IN THE PROCESS OF BEING REVISED AND FURTHER LICENSING SHOULD BE DELAYED UNTIL THEY HAVE BEEN APPROVED.

THANKS FOR EXTENDING ME THIS OPPORTUNITY OF EXPRESSING MY VIEWS.

SINCERELY,

Wally

W. J. WELLENSTEIN
PRESIDENT

WJW/DG

CC: REPRESENTATIVE BRADLEY
REPRESENTATIVE GARDINER

GROUP THREE DESIGN
LANDSCAPE ARCHITECTURE • LAND USE PLANNING • INTERIOR DESIGN

February 28, 19

Honora[illegible] L. Rader, President
Alask[illegible] Senate
Pouch V
Juneau, Alaska 99901

Re.: SB416, Registration for Landscape Architects

Dear Senator Rader:

Thankyou very much for your letter of February 7 and please forgive my delay in answering. Your interest in the bill is very much appreciated.

To bring you up to date, the bill, as originally drafted, is being revised considerably as a result of the February 7th hearing in the Senate Commerce Committee. According to my business partner, Burdett Lent, the questions you raised in your letter were addressed during that hearing.

Regarding the numbers of representatives on the Board, it was generally agreed by all that just one representative would be sufficient for the landscape architects. For further detailed statistics regarding exact numbers of practitioners in the various professions, please permit me to refer you to the chairman of our registration committee, Mr. Ross Hart of the Juneau firm of Kramer, Chin and Mayo. His phone number is Juneau 586-6400.

You asked if landscape architects could be covered under the definition of architects. This was also discussed. The two professions are, in actuality, two separate and distinct fields. Totally different curriculums are required to be properly trained in the practice of each. Presently, existing state examinations in other states test licensure applicants for proficiency in each profession, on a separate basis, because they are different. Please also refer to the definitions for the practice of each in the existing and proposed bills. I think these will help clarify the distinction.

Regarding prohibiting architects from practicing landscape architecture: Again, because these are separate fields, it is fairly unlikely that a practitioner in one would be interested in attemting to practice in the field of another, unless he is trained in both. The general problem of limiting the other professions

THE LOG CABIN, 305 EAGLE STREET • ANCHORAGE, ALASKA 99501 • (907) 278-7022 — 278-8855

was discussed at the same time. An amendment to the definition, (15), pg.13, was suggested, which no one objected to. In essence that amendment states that there is nothing intended in the definition to restrict or prohibit the other professions in the normal practice in their respective areas.

I do not have the benefit of a copy of the bill as revised by the Commerce Committee. Please refer to that bill as soon as it becomes available as I believe it will address the questions you expressed.

My partner and I hope the above information will be helpful to you. We respectfully request your support.

Yours truly,

Jonathan F. Houk, Partner, ASLA, ASPO
Landscape Architect

cc's. Sen. W. E. Bradley, Chrm., Sen Commerce Comm.
Rep. Bob Bradley, Chrm., House State Affairs Comm.
Rep. Terry Gardiner, Chrm., House Judiciary Comm.
Governor Hammond

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING POUCH D – JUNEAU 99811

BOARD OF ARCHITECTS, ENGINEERS AND LAND SURVEYORS

February 28, 1978

Honorable Bob Bradley, Chairman
House State Affairs Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

At the February 25 meeting of the Board of Architects, Engineers and Land Surveyors the bill to license landscape architects was thoroughly reviewed and discussed. A position was taken by the board.

On initial contact by the Landscape Architects Society the board endorsed the basic concept of licensing landscape architects and at the same time the landscape architects were asked to contact other professional societies and keep the board informed. No further contact was made nor information conveyed. The next known to the board was the introduction of HB 739 and SB 416.

The Board of Registration now opposes the bills as presently written. There are three areas of deep concern.

First, it is felt that two members on the board is too great of representation.

Secondly, the board is troubled with the definition of landscape architects. The board sees too great an overlap into other professions such as civil engineering, land surveying and architecture. It further foresees an erosion of the responsibilities of these closely allied professions.

The third area entails the protection of the health, safety and welfare of the public. These are the only reasons for licensing any of our professions and we cannot justify the licensing of landscape architects on these bases.

08-H8LH

The board also discussed and showed concern over the number of land surveyors, civil engineers and architects who will be licensed by "grandfather rights" and their subsequent branching into new fields of endeavor through this loophole.

We herewith request your support of drastically revising this legislation or defeating it.

Sincerely,

Douglas Ackley
President

DA/jar2/2

cc: All Senators and Representatives

P.O. Box 2168
Sitka, Alaska 99835

February 28, 1978

Representative Terry Gardiner
Chairman House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Representative Gardiner,
Alaska is one of the few states presently not requiring registration of Landscape Architects. I urge you to give favorable support of SB 416 or HB 655 for creating registration of Landscape Architects.

Sincerely,

John Costello

John Costello

Gardiner

Alaska Society of Professional Engineers

DONALD R. DENT JR. P.E.
National Director
4135 Hood Court
Anchorage, Alaska 99503

Tel.(907) 277-8027
(907) 272-5451

February 17, 1978

Representative Bill Miles
Pouch V
Juneau, AK 99811

Reference: HB 655

Subject: Registration of Landscape Architects

Dear Bill:

I appreciate your calling me Wednesday evening to discuss HB 655.

The Engineering group, mostly in private practice, object to this piece of legislation, and its Senate mirror image SB 416, on the grounds that it will allow an infringement of a non-qualified group of people to practice within areas considered in Alaska and other States as Architecture and Civil Engineering, as well as leaving the door open for infringements on platting and planning processes at the local level which effect Land Surveying.

I am attaching excerpts from AS08.48.341 and 12AAC36.250 which will give you Statutory and Administrative background that we are looking at.

In the proposed HB 655, under Section 30 "Practice of Landscape Architecture", the definition is vague enough that functions which are part of the practice of Architecture, Engineering and Surveying could be infringed with impunity as is stated on line 8, "...but not limited to...' Specific infringements lines 8 thru 11, "... consultation, investigation, research, planning, design, preparation of drawings, specifications and contract documents and responsible supervision or construction management in connection with the development of land;" note semi-colon at end of this sentence. At first reading it appears that next sentence "to the extent," etc. is part of the aforementioned but it is not. Lines 8 thru 13 is carte blanche license to do any or all A-E or L.S. work involved in land development.

Lines 12 thru 22 just name specifics which are infringements also.

Line 13 - "... or improvement of natural land features,..." A-E functions.
Line 14 - "... naturalistic or aesthetic values, or determination of proper land use..." A-E and L.S. Functions.
Line 16 - "...approaches for buildings and structures or other improvements..." involves paving, parking, traffic pattern, sight distances, screening- to name a few.
Line 17 thru 20 - without quoting, this is a clear statement of supposed ability of landscape architects to do hydraulic and hydrologic engineering, as well as, site engineering.
Line 22 thru 24 - stating that it does not include "design of buildings or structures with separate and self-contained purposes such as are ordinarily included in the practice of architecture or engineering" does not conform with the previous statements or fact, in that it says architecture and engineering are only concerned with design of buildings and structures.

If, from the impression you left with me, it is a foregone conclusion the bill will pass regardless of objections, this definition would be better written as:

(15) "practice of landscape architecture" means professional s or creative work, the adequate performance of which requires landscape architectural education, training and experience in work of consultation, investigation, research, planning, design, preparation of drawings and contract documents concerned with the preservation, enhancement or improvement of natural land features with naturalistic and aesthetic values, involved with ground cover and plantings, and determination of environmental problems of land. It does not include work which is defined by statute or usual and common practice of Architecture, Engineering or Land Surveying.

Under Section 1 of HB 655, the landscape architects are requesting two representatives on the Board of Registration. This is a large representation for a small number of people. Following is a listing of the present number of each catagories and their representation on the board:

Catagory	Registrants	Representatives
Civil Engineers	1097	2
*Land Surveyors	588	1
Architects	295	3
Mechanical Engineers	185	1
Electrical Engineers	170	1
Mining Engineers	74	1
Petroleum Engineers	28	0
Chemical Engineers	10	0
*Structural Engineers	3	0
*Sanitary Engineers	1	0

*276 Land Surveyors are dual-licensed Civil and Mining Engineers. The Structural and Sanitary Engineers were licensed in the early 1950's, the catagories are not licenced specifically now.

The reason for three architects on the Board is that three men make the evaluation of architectural applicants. Evaluation of other catagories are done the same way - three reviews. The Civil Engineering and Land Surveyors are dual-licensed CE's and L.S.'s.

If the board were increased to eleven, it would be more equitable if one Civil Engineer were returned to the board together with one new catagory. APpetroleum Engineer would be more important, overall.

If, as indicated by you, that the bill will go through anyway, we would like to see AS 08.48.261 (see Section 20) and AS 08.48.331(12) (see Section 28) repealed. They are both sections leading to enforcement ambiguities. A former Highway Commissioner and Public Works Commissioner had 261 inserted in the law in 1972 purportedly to assist them in administration of their departments. Since then it has been ignored by those departments and they have had non-qualified, non-registered people making engineering decisions which definitely affect the public health and welfare - Juneau "freeway" falling apart is an example. 331(12) allows firms to do Architectural, Engineering or Land Surveying work without a license although effecting public life, health, and welfare. This paragraph was inserted by Al McVeigh on floor vote in 1972.

Bill, I think you get the picture of how we view the registering of Landscape Arctitects. We would like to see both bills (HB 655 and SB 416) kept in committee to die with the session. To require another level of registration we feel is unwarranted in this case.

Sincerely,

ALASKAN SOCIETY OF PROFESSIONAL ENGINEERS

Donald R. Dent, Jr., P.E., L.S.
Legislative Chairman

association or corporation which officer or employee practices architecture, engineering or land surveying when required by his official capacity or work duties connected with his employment if such individual firm, partnership, association or corporation is not engaged in the business of offering architectural, engineering or land surveying services to the public.

Sec. 08.48.341. DEFINITIONS. In this chapter

(1) "architect" means a professional architect;

(2) "board" means the State Board of Registration for Architects, Engineers and Land Surveyors;

(3) "certificate of authorization" means a certificate issued by the board authorizing a corporation to provide professional services in architecture, engineering or land surveying through individuals legally registered by the board;

(4) "certificate of registration" means a certificate issued by the board recognizing the individual named in the certificate as meeting the requirements for registration under this chapter;

(5) "engineer" means a professional engineer;

(6) "land surveyor" means a professional land surveyor;

(7) "practice of architecture" means professional service or creative work in the functional and aesthetic design of structures, the teaching of advanced architectural courses in institutions of higher learning, consultation, investigation, evaluation, planning, design and professional observation of construction of public or private structures buildings, works or projects, and architectural review of plans and specifications by regulatory agencies; it may by regulation of the board include mechanical, electrial or structural design of relatively minor importance to the project as a whole;

(8) "practice of engineering" means professional or creative work, the adequate performance of which requires the application of specialized knowledge of mathematics and sciences, dealing with the functional and economic design of buildings, structures, machines, equipment, utilities systems, materials, processes, works or projects, public or private; the teaching of advanced engineering courses in institutions of higher learning, the direction of or the performance of engineering surveys, consultation, investigation, evaluation, planning, design, and professional observation of construction of public and private structures, buildings, works or projects and engineering review of plans and specifications by regulatory agencies; it may by regulation of the board include architectural design of relatively minor importance to the project as a whole, but it does not include comprehensive architectural services;

(9) "practice of land surveying" means any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related sciences, and the relevant requirements of law for adequate evidence of the act of measuring and locating land, geodetic and cadastral surveys for the location and monumentation of property boundaries, for the platting and planning of land and subdivisions, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys;

(10) "professional architect" means a person who has been legally registered as a professional architect by the board;

(11) "professional engineer" means a person who has been legally registered as a professional engineer by the board;

(12) "professional land surveyor" means a person who has been legally registered as a professional land surveyor by the board;

(13) "responsible charge" means the direct control and personal supervision of work.

(4) "civil engineering" means that branch of professional engineering which embraces studies and activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbor, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewage, refuse disposal, foundations, framed and homogeneous structures, buildings or bridges;

(5) "design" means the original and unique application of basic aesthetic, mathematical and physical and chemical principles to provide an acceptable solution of a problem or project;

(6) "direct personal supervision" means direct personal supervision at the working level of the preparation of architectural or engineering documents affecting the health, welfare and safety of the public and not as indirect supervision from a higher level of management;

(7) "ECPD" means Engineering Council for Professional Development;

(8) "electrical engineering" means that branch of professional engineering which embraces studies and activities relating to generation, transmission and utilization of electrical energy and to telecommunications systems and facilities, including the design of electrical, electronic and magnetic circuits and components, and the technical control of their operation and of the design of electrical and telecommunications gear; it is concerned with the research, organizational and economic aspects of these studies and activities;

(9) "mechanical engineering" means that branch of professional engineering which deals with engineering problems relating to generation, transmission and utilization of energy in the thermal or mechanical form, and also with engineering problems relating to the production of tools, machinery and their products and to mechanical processes, heating, air conditioning, refrigeration and plumbing; it is concerned with the research, design, production, operational, organizational and economic aspects of these studies and activities;

(10) "mining engineering" means that branch of professional engineering which embraces studies or activities relating to the exploration, location, exploitation and recovery of minerals and mineral ores; it is concerned with research, design, construction and development of structures, devices and facilities of production and the economic aspects related to these studies and activities;

(11) "NAAB" means the National Architectural Accrediting Board;

(12) "NCARB" means the National Council of Architectural Registration Boards;

(13) "NCEE" means the National Council of Engineering Examiners;

(14) "petroleum engineering" means that branch of professional engineering which embraces studies or activities relating to the exploration, location, exploitation and recovery of natural fluid hydrocarbons; it is concerned with research, design, production and operations of devices, and the economic aspects of these studies and activities;

(15) "practice of architecture" includes mechanical, electrical, or structural design of relatively minor importance to the project as a whole;

(16) "practice of engineering" includes architectural design of relatively minor importance to the project as a whole;

(17) "professional engineering" includes:

(A) chemical engineering;

(B) civil engineering;

(C) electrical engineering;

(D) mechanical engineering;

(E) mining engineering;

(F) petroleum engineering;

(18) "professional work" means the time the applicant has been occupied in architecture, engineering or land surveying work of higher grade and responsibility than that of sub-professional work;

(19) "responsible charge of work in the field" means the direction of work, the successful accomplishment of which rested upon the applicant, where the applicant has to decide questions of methods of execution and suitability of materials without relying upon advice or instructions from his superiors and where the applicant has to supply solutions to deficiencies in plans or has to correct errors in designs without first referring them to higher authority for approval, except where the approval is a matter of form;

(20) "responsible charge of work in the office" means undertaking investigations or carrying out assignments, which demand resourcefulness and originality, or making plans, writing specifications, and directing drafting and computations for the design of architectural, engineering or land surveying work with only rough sketches, general information and field measurements for reference;

(21) "state" means the State of Alaska;

(22) "sub-professional work" means time spent working as rodman, chainman, recorder, draftsman, clerk of works, instrument man, inspector, or similar work where personal responsibility and technical knowledge are slight. (Eff. May 23, 1974, Register 50)

Authority: AS 08.48.101

BRUCE G. SHARKY, ASLA
3129 Lochwood Circle
Anchorage, AK 99504
(907) 337-6932

January 30, 1978

The Honorable Representative Gardiner, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska

RE: House Bill NO. 655
Landscape Architects

Honorable Representative Gardiner:

The purpose of this letter is to convey my support of Bill NO. 655 . Passage of the Bill would be in the public interest and I therefore urge you to give support to the Bill.

The profession of landscape architecture is a recognized and established profession of long standing. Its origins are from Europe where it flourished prior to the American Revolution. The first landscape architect in the United States was Fredrick Law Olmstead, the designer of New York City's famous Central Park. Presently there are some 35 states having laws providing registration for landscape architects. 21 universities have four year programs leading to a bachelors degree; 15 schools offer advanced degrees. The designated accrediting body for these schools is the American Society of Landscape Architects (founded in 1899). The Council of Landscape Architects Registration Board administers the Unified National Examination, an examination recognized and validated by HEW.

I have read over the Bill and feel that it will provide valuable protection to the public's health, safety and welfare in the specific areas of service members of the landscape architecture profession are dully qualified and technically trained. Further I believe the lack of registration in Alaska unfairly restricts landscape architects from practicing their profession.

The concept of incorporating registration of landscape architects into the existing Architects. Engineers and Land Surveyors' statute is particularly meritorious from the standpoint of being a sound fiscal measure as well as a practical and efficient administrative framework.

It is my sincere belief that the passage of the Bill would be in the public interest and would allow landscape architects in our State to contribute towards the enhancement of our living and economic environment. I therefore urge you to support the Bill and give it the necessary guidance as it is reviewed in committee and on the floor. Thank you for your support.

Very sincerly,

Bruce G. Sharky, ASLA

February 21, 1978

Honorable Terry Gardiner
State House Judiciary Comm.
Juneau, Alaska 99811

Dear Mr. Gardiner;

House Bill No. 655 requiring the licensing of Landscape Architects is, in my opinion, not in the best intrest of the people of the State of Alaska.

The duties set forth in Section No. 30 of the proposed bill which "protect the public health, safety, and welfare" are clearly a duplication of duties for licensed professionals already in existance.

Landscape Architecture is a specilized branch of one or more of the existing professions and not so independent to warrant its own license.

This bill, if passed, would allow the duties of a Landscape Architect to unduly overlap those of a professional Civil Engineer or Architect. Therefore, I would strongly urge House Bill No. 655 be defeated.

Sincerly;

Terry Brenner

Terry Brenner

Rt. 4, Box 4545-25
Juneau, Alaska, 99803

February 15, 1978

The Honorable Mike Miller
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 655
An Act Relating to the State Board
of Registration for Architects,
Engineers and Land Surveyors

Dear Sir,

As a Registered Professional Engineer (1855-E, 1969) and a Registered Land Surveyor (1410-S, 1965), both by examination in the State of Alaska, I wish to submit my strongest objections to your House Bill No. 655 concerning legislation of the State of Alaska for the recreation of our existing State Board of Registration for Architects, Engineers, and Land Surveyors into a State Board of Registration for Architects, Engineers, Landscape Architects, and Land Surveyors.

The primary concern of those desiring the expansion of the present existing board of Architects, Engineer and Land Surveyors is their immediate need for professional licensing. Those landscape architects desiring professional licensing state their primary reasons are;

1). to protect the public health, safety and welfare

2). lack of registration in Alaska restricts landscape architects from practicing their profession.

To both of their primary concerns I state that this is a falsism. In reviewing Concern No. 1 and utilizing such reference texts as McGraw-Hills Dictionary of Scientific and Technical Terms, the following definitions are given for Landscape Architecture and Landscape Engineer.

Landscape Architecture: The art of arranging and fitting land for human use and enjoyment.

Landscape Engineer: A person who applied engineering principals and methods to planning, design and construction of natural scenery arrangements on a tract of land. (It is interesting to note that there is not a definition for a Landscape Architect in any of the reference texts I examined.)

I find it hard to believe that the principle methods of planning and designing for the construction of natural scenery arrangements (the cosmetics of land) concerns the health, safety and welfare of the public. The other point, the lack of registration restricts landscape architects from practicing their profession is also a falsism. There are landscape architects practicing not only in established architectural/engineering firms but also those practicing on their own without any enfringement onto the regulations and laws governing the practice of architects, engineer and land surveyors.

Landscape architecture, or landscape engineering, whichever the definition desired to utilize, is in truth, a subfield of architecture and engineering. Presently, the state of Alaska does not registered subfield professionals. There have been many cases in point where subfields have desired or tried to change registration acts. I specifically cite legislation years past to register specifically highway engineers, sanitary engineers, and structural engineers. It was felt then, that all these professions are subfields of the prime professional engineer and being a professional, it is the individual's integrity and knowledge that will keep the professional from working in a field that he may not have a complete and knowledgable understanding therein. Therefore, it is this writer's primary opinion that if a Landscape Architect desires registration and he or she has attended and graduated from a school of architecture or engineering, he or she can take the registration examination for an architect or engineer and practice in his or her chosen field of endeavor, i.e., Landscape Architecture.

I have objections, both as an engineer and as a land surveyor, to Page 13 of the bill, Section 30 AS 08.48.341, Item (15), "Practice of Landscape Architecture". This defines the practice of landscape architecture as "professional service or creative work, the adequate performance of which requires landscape architectural education, training and experience, professional services include, but are not limited to, consultation, investigation, research, planning, design, preparation of drawings, specifications, and contract documents and responsible supervision or construction management in connection with the development of land areas". To the above, this is allowed through the present board regulations in the field of not only architecture but also engineering and land surveying to a limited extent. Specific items within the Landscape Architect's Architecture's realm of responsibility include;

> "the determination of environmental problems with land relating to erosion, flooding, blight, and other hazards".

This is the primary field of civil engineering with a specialty of soils engineering, hydrology engineering and geophysical engineering and to imply that the surficial "cosmetic" treatment of land extends into the previous fields is incorrect. Alaska is unique in it soil problems. Our northern regions are sublined with tundra and permafrost while our southern regions are covered and sublined with peat (muskeg) and glacial marine drifts and tills. There is no school of architecture, to my knowledge, that has specialized education in the treatment of soils with such unique difficulties. The University of Alaska does not have a school of architecture and I do not believe training to deal with soils and other hazards can be obtained any where else in the United States with Alaska's particular problem, save and except through the University of Alaska or through practical experience gained while working for and under other professional individuals.

> "The shaping and contouring of land and water forms".

This is already conducted by existing practicing architects, engineers and land surveyors. Either these individuals desiring to perform such service can be registered in the prime professional field or all existing architects, engineers, and land surveyors should be Grandfather'ed into becoming Landscape Architects.

> "the determination of drainage and provisions of storm drainage systems where those systems do not require structural design of system components".

Storm drainage design, rainfall runoff, etc. is conducted usually by civil engineers and to some limited extent, by architects and land surveyors. The design of system components for storm drainage systems is the detailed and unique field which involves soils analysis, structural competence, etc. This statement and others reflect that Landscape Architects have special education and training in hydraulic and hydrology which I personally do not believe is factual. If it were, or is, why do they not take the current professional examinations?

It must be stated that there seems to be extensive overlaps between landscape architecture, architecture, engineering, and land surveying. It is my opinion that Alaska does not need any new registered specialists in any field. The recognition of them (landscape architects) and allowing landscape architects to become active members of our board should be based on their ability to pass existing examinations in the current fields of architecture or engineering to denote their competence to practice professionally. Other professional individuals are presently allowed to practice without registration and I believe this bill

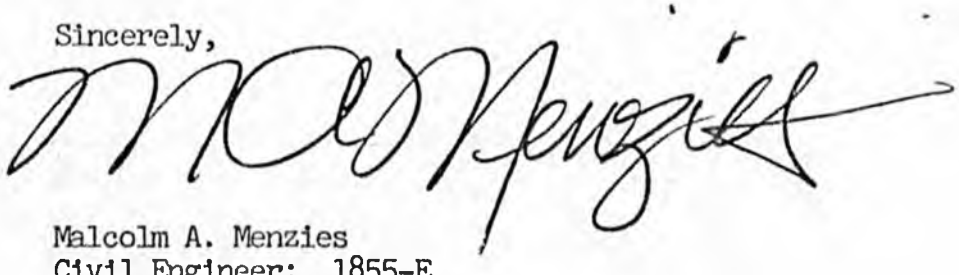
would bring them forward in mass, to desire professional "public" recognition. These other professionals include; biologists, hydrologists, geologists, geophysicists, as well as others. The bill could only cost the State confusion in responsibility, many added dollars to the already far extended budget to police and monitor such a program, as well as render examinations in this particular field.

Further objections I have to the bill concern the enlargement of the board. Presently the board consists of nine members with a quorum being five. This bill expands the board to 11 members with six members being a quorum. The quorum should never be made up of a possible tie vote. It is my understanding from talking with board members, that the budget for such a board is relatively limited. The board does not have sufficient funds to act or police much of the existing regulation, let alone creating more expense to the State by adding landscape architects to the board (two each) and allowing them such a large vote on said board.

In closing I must reiterate strongly that the need for specialities added to the existing Board of Architects, Engineers and Land Surveyors is not required to register professionally those individuals desiring specialized registration. Registration can be obtained by the general examination and specifically the lack of landscape architects registered in Alaska, has not, to date, restricted them from practicing their profession in Alaska.

Should there be questions or if I may be of further assistance in explaining my views on this act of legislation, I would be most happy to do so at your convenience.

Sincerely,



Malcolm A. Menzies
Civil Engineer: 1855-E
Land Surveyor: 1410-S

MAM:fej

P.O. Box 1786
Juneau, Alaska 99802

CH2M HILL
engineers
planners
economists
scientists

7 February 1978
K40.10

Honorable W.E. "Brad" Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

Subject: Proposed Registration of Landscape Architects, SB 416

I am a registered civil engineer with extensive personal experience in projects which required a strong involvement by landscape architects. While most of these projects were accomplished beyond Alaska, it was apparent that the most effective professionals resided in growing communities.

The impact these talented people has on many routine and prestigious projects was invaluable.

I strongly support professional registration of these specialists. They provide services beyond those technical areas commonly practiced by architects or engineers and will be a significant force in Alaska's future growth.

It is critical, however, that the wording of the registration law not prevent the continued execution of specialized areas such as site design or the various areas of planning which are competently accomplished by many architects, engineers or planners.

Sincerely,

Charles E. Torkko
Regional Manager

CET:hs

cc: Terry Gardiner - Alaska Senate
Bob Bradley - Alaska Senate

HB 655

6234 Tanaina Drive
Anchorage, Alaska 99502
February 8, 1978

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Mr. Gardiner:

Your Committee has before it, House Bill 655 regarding the licensing of Landscape Architects.

While I am unfamilar with the contents of the bill, I am aware of the problem Landscape Architects face in regard to drawing plans for projects with Federal funding. It is required that such plans be stamped by a licensed firm. While architects and engineers in Alaska are so licensed, Landscape Architects are not. This is a severe handican.

I can appreciaste that endless licensing of professions may not be the answer but some solution must be found to the above stated problem.

Sincerely,

Gwynneth Wilson

Gwynneth Wilson, Chairman
Resolution Park Steering Committee

1771 Wakefield Circle
Anchorage, Alaska 99502
February 3, 1978

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

I urge you to support HB 655 to ensure the professional registry and licensing of landscape architects in Alaska.

At present, lack of recognition by the State severely restricts and discourages landscape architects from economically feasible private practice. I am aware of several instances in which landscape architects have been denied rightful opportunities, and damaged economically from representing their clients in getting designs, construction drawings and technical documents approved because they are not recognized by State registry. This affects not only those currently practicing in Alaska, but also discourages young professionals from moving into the state.

Registry would also prevent the hiring of unqualified persons in land planning projects which directly involve issues of public concern, health, safety or welfare.

Landscape architects' entire training and ethics are directed toward responsible and comprehensive planning and design of land and outdoor spaces; from a state or region-wide scale, down to individual residences. Their profession works in concert with, not in conflict with, architects, engineers, and land surveyors.

Please support HB 655.

Hetty Mitchell

Hetty Mitchell
Landscape Architect

where do you stand on this

By Miller - in H-St Affairs / Judiciary / Rules

LAND DESIGN NORTH
LANDSCAPE ARCHITECTURE
RESOURCE/RECREATION PLANNING
1709 S BRAGAW ST., SUITE J
ANCHORAGE, ALASKA 99504
(907) 277-7122

February 3,1978

The honorable Representative Gardiner, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Honorable Representative Gardiner

As a landscape architect in private practice I am writing to urge your support for passage of House Bill 655, establishing professional licensing for landscape architects practicing in Alaska.

I have practiced in Alaska for over three (3) years without the benefit of licensure; and believe that passage of this legislation is in the public's interest as it relates to the health, safety, and welfare of users of completed landscape architectural projects.

In preparation for becoming a landscape architect I completed six (6) years of educational train[illegible] the University of California, worked for local government in the [illegible] of park planning and construction and passed and been licensed [illegible]ctice landscape architecture in the State of California. Since movi[illegible] and starting my practice here in 1975 I have found incompetence, misinformation, and potentially hazardous works being completed by untrained specialists.

It is my sincere belief that passage of this legislation will contribute towards the betterment of our living environment, and economic growth of this State. I hope you will support the Bill and give it guidance as it is reviewed through committee and on the floor.

Very sincerely yours,

Kenneth E. Pendleton

Kenneth E. Pendleton, ASLA
Principal

KEP:cc

Architects/Engineers/Planners
3301 C Street Suite 210
Anchorage, Alaska 99503
907/276 4035

Ellerbe

January 27, 1978

Honorable Representative Terry Gardiner
House Judiciary Committee Chairman
Pouch V
Juneau, AK 99811

Re: House Bill No. 655

Honorable Representative Gardiner:

The purpose of this letter is to convey my support of the above Bill. Passage of the Bill would be in the public interest and I therefore urge that you support the Bill.

I have read over the Bill and feel that it will provide valuable protection to the public's health, safety and welfare in the specific areas of service in which members of the landscape architecture profession are duly qualified and technically trained. I believe the lack of registration in Alaska restricts landscape architects from practicing their profession.

The concept of incorporating registration of landscape architects into the exising Architects, Engineers and Land Surveyors' statute is particularly advantageous from the standpoint of being both a sound fiscal measure and efficient administrative concept.

Again I urge you to support the Bill and give it the necessary guidance in order to pass this legislative session.

Very truly yours,

Stephen Fiskum
Registered Architect No. 12428, Minnesota

SF:ds

R.D. MASSEY
& ASSOCIATES · AIA

Architects
& Planners

1503 West 33rd (907) 276-0929
Anchorage, Alaska 99503

January 30, 1978

Terry Gardiner, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: House Bill no. 655

Honorable Representative Gardiner;

The purpose of this letter is to express concern and reservation regarding the above bill. My concern is two-fold.

First, the proposed section 30 which would amend by adding a new paragraph defining "practice of landscape architecture" to AS 08.48.(341). Most of the defined areas are now performed by capable architects, engineers, land surveyors and planners (not a registered profession), often in conjunction with landscape architects. In actual practice, I feel that this definition legally removes from me specialties that I feel I must perform or control in order to fulfill my responsibilities as a professional architect. The passage of this bill will require me to retain the services of a consulting landscape architect for all building for which I am commissioned. I feel that this is unreasonable and will further inflate the total consultants' fee for buildings and structures by requiring another consultant to perform work traditionally done by other registered professionals.

Secondly, the registration statutes are primarily concerned with professions directly involved with public health, safety, and welfare. I do not feel that professional registration for landscape architects is warranted under the intended protection of the public. The extent of their work is not of a nature similar to others covered by this statute, i.e., design of habitable structures, sanitary systems or legal plotting.

At the January meeting of the Anchorage Chapter, American Institute of Architects, representatives of the American Society of Landscape Architects stated that the reasoning behind the bill was to guarantee that one would be able to distinguish qualified landscape architects. This, however, could be achieved by other means.

If this bill should be enacted, I feel that the Grandfather Clause is over restrictive. I am sure others who now are engaged in other types of practice, but do work in areas of specialties described

cont. . .

in the bill in execution of their present duties, would feel this way also. As a professional architect and as a planner with four and one-half (4½) years of practice, I feel that I would unduly be deprived of my right to provide services to the public under the restrictions of this bill. I am already, as an individual and as chief architect of a firm, providing these consulting services. Passage of this bill would place undo hardship on myself and others in similar positions.

Amendment of section 08.48.011 to require two board members to be landscape architects would be out of proportion of work load. If representation is required, one member would be adequate.

In closing, I would like to state that I can somewhat sympathize with their position, however, I cannot support this bill as it is written.

Very truly yours,

Arthur D. Kjos, Architect
(4313-A, Alaska)
Chief Architect
R.D. MASSEY & ASSOCIATES

ADK:rjc

cc; Governor Jay S. Hammond
Representative C.U. Chatterton
Representative Rick Urion
Senator Joseph Orsini
Representative Bob Bradley
Senator W.E. Bradley

Architects/Engineers/Planners
3301 C Street Suite 210
Anchorage, Alaska 99503
907/276 4035

Ellerbe®

January 27, 1978

Honorable Representative Terry Gardiner
House Judiciary Committee Chairman
Pouch V
Juneau, AK 99811

Re: House Bill No. 655

Honorable Representative Gardiner:

The purpose of this letter is to convey my support of the above Bill. Passage of the Bill would be in the public interest and I therefore urge that you support the Bill.

I have read over the Bill and feel that it will provide valuable protection to the public's health, safety and welfare in the specific areas of service in which members of the landscape architecture profession are duly qualified and technically trained. I believe the lack of registration in Alaska restricts landscape architects from practicing their profession.

The concept of incorporating registration of landscape architects into the exising Architects, Engineers and Land Surveyors' statute is particularly advantageous from the standpoint of being both a sound fiscal measure and efficient administrative concept.

Again I urge you to support the Bill and give it the necessary guidance in order to pass this legislative session.

Very truly yours,

Stephen Fiskum
Registered Architect No. 12428, Minnesota

SF:ds

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

BOARD OF ARCHITECTS, ENGINEERS & LAND SURVEYORS

October 31, 1977

Mr. Bruce G. Sharky, President
Alaska Chapter of
American Society of
Landscape Architects
3129 Lochwood Circle
Anchorage, AK 99504

Dear Mr. Sharky:

The Board of Architects, Engineers & Land Surveyors wishes to thank you and the other members of your organization for your presentation at their September meeting.

They wish you to know that they support the basic concept of registration for landscape architects. However, they feel it is advisable to enlist the input and support of the various societies you would be working with.

They would appreciate being updated periodically on your progress.

If they can be of assistance please do not hesitate to contact this office.

Very truly yours

Erma Norlund

Erma Norlund
Licensing Examiner

EN/ls/1/31

08-H0LH

LANDSCAPE ARCH ECTS CURRENTLY WORKING
IN THE STATE OF ALASKA

	NAME	EMPLOYMENT	CITY
1.	Wayne Adams	U.S. Air Force	Elmendorf
2.	R. Clay Allred	Retired	Juneau
3.	Sonja Alavarez	Private Practice	Ketchikan
4.	Rainer E. Behnert	U.S. Forest Service	Juneau
5.	Ed Brannon	U.S. Forest Service	Juneau
6.	Bailey Breedlove	National Park Service	Anchorage
7.	Douglas Campbell	U.S. Forest Service	Ketchikan
8.	Eric Chan	Chan & Chan	Anchorage
9.	Sandra Cook	Bomhoff Associates	Anchorage
10.	John Costello	U.S. Forest Service	Sitka
11.	Wilber B. Creighton	Fairbanks N.Star Bor.Div.Pks.	Fairbanks
12.	Ron Allen Crenshaw	Alaska State Parks	Anchorage
13.	Jeff Drage	Quadra Engineers	Anchorage
14.	Sherl Eastburg	Student (U of O)	Anchorage
15.	Richard Estelle	U.S. Forest Service	Petersburg
16.	W. L. "Bill" Evans II	Private	Anchorage
17.	Paul Fritz	National Park Service	Anchorage
18.	David H. Gardner	R&M Consultants, Inc.	Anchorage
19.	John A. Gliva	Alaska Dept. Comm. Reg. Affs.	Anchorage
20.	Ross F. Hart	Kramer, Chin & Mayo, Inc.	Juneau
21.	Ed Hartsell	U.S. Forest Service	Ketchikan
22.	Ward Hastings	B.L.M. OCS Office	Anchorage
23.	Steve Henig	U.S. Forest Service	Anchorage
24.	Glen Hildreth	Sitnasuak Native Corp.	Nome
25.	Wayne (Bud) Hooker	Alyeska Pipeline Service Co.	Anchorage
26.	Jonathon F. Houk	Group III Design	Anchorage
27.	Cindy Kinard	U.S. Corps of Engineers	Anchorage
28.	Jim Kirshenman	U.S. Forest Service	Ketchikan
29.	James Knode	U.S. Forest Service	Sitka
30.	Richard A LeFebvre	Alaska Division of Lands	Anchorage
31.	Burdett B. Lent	Group III Design	Anchorage
32.	Carlos Lozano	U.S. Forest Service	Anchorage
33.	Duane H. Lyon	U.S. Forest Service	Anchorage
34.	Rod Monroe	Unalakleet Native Corp.	Unalakleet
35.	Hetty Mitchell	Anchorage Park Department	Anchorage
36.	Dolores Moulton	Alaska Dept. of Fish and Game	Juneau
37.	Kenneth E. Pendleton	Land Design North	Anchorage
38.	Louis C. Penna	Anchorage Park Department	Anchorage
39.	Guy Pugmire	U.S. Corps of Engineers	Anchorage
40.	Sanford P. Rabinowitch	Alaska Division of Parks	Anchorage
41.	Carl Richter	U.S. Forest Service	Petersburg
42.	David C. Riemer	U.S. Forest Service	Petersburg
43.	Stan Rogers	B.L.M. Alaska Pipeline Ofc.	Anchorage
44.	Frank Rue	Alaska Dept. Comm.Reg.Affs.	Juneau
45.	Gordon J. Schlosser	Private Practice	Anchorage
46.	Benjamin Shaine	Private Practice	Anchorage
47.	Bruce G. Sharky	Land Design North	Anchorage
48.	Nola Sharky	Land Design North	Anchorage
49.	Harry Shore	Tryck, Nyman & Hayes	Anchorage
50.	John Short	U.S. Forest Service	Ketchikan
51.	Stanley V. Specht	Bureau of Land Management	Anchorage
52.	Marcia A. Steven	Group III Design	Anchorage

53.	Helen P. Sullivan	Private Practice	Anchorage
54.	Vicki Sung	Chan & Chan	Anchorage
55.	Jim Tallerico	U.S. Forest Service	Anchorage
56.	Darrel Tracy	U.S. Forest Service	Sitka
57.	Ronald L. Wood	U.S. Forest Service	Juneau
58.	Lee A Wyatt	R&M Consultants	Anchorage

SOME PRACTICAL QUESTIONS RELATING TO LICENSURE OF LANDSCAPE ARCHITECTS

TO: THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE - SECOND SESSION

RE: SENATE BILL NO. 416
HOUSE BILL NO. 655

PREPARED BY: ALASKA CHAPTER, AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS - CONTACT: MR. ROSS HART - 586-6400

SOME PRACTICAL QUESTIONS

1. WHY IS LICENSURE NEEDED?

Grounded in the responsibility of the State of Alaska to maintain means for protecting health, safety, and welfare of their citizens, licensure provides a basis for making a determination of minimum competency. When that determination has been made, the state may then confer the priviledge of doing some thing(s) or engaging in certain practices as indicated on a license issued to the person proven competent. The most widely known is the driver's license issued upon an individual's passing a driving test.

In essence, a license holder has been granted permission to do something that, if done improperly, could harm others. Such permission must be granted by a duly established authority in order to protect the public, assure competence, weed out incompetence, and to provide discipline, redress, or revocation where bad practice has been proven. Moreover, since an average client cannot be reasonably expected to have the level of sophistication necessary to adequately evaluate either the sepcialized services offered by Landscape Architects or the level of competence of a given practitioner, that client needs the specialized protections provided by licensure. In addition, since certain elements of specialized practice may already have been legally sanctioned as being under the pervue of other more established professions whose requirements to sit for examination may prohibit members of younger professions from qualifying, due process must be available to applicants whose newer area of expertise is not provided for by the older boards or the examinations they adminster.

2. HOW IS LANDSCAPE ARCHITECTURE INVOLVED WITH HEALTH, SAFETY, AND WELFARE?

"Clear and direct" relationships between protection of the public and the practice of Landscape Architecture may be seen in the following examples:

a. Improperly specified relationships between water supplies, such as to artificial ponds, fountains, etc., and water drainage facilities could result in contamination of a water supply system of an entire community.

b. Improper design of outdoor lighting systems and their supply lines could present undue fire and/or shock hazards.

c. Inadequate design of outdoor structures such as those used in parks and other recreational facilities could result in injury should those structures fail. Such structures can include small shelters, footbridges, gazebos, kiosks, decks, rest facilities, among others.

d. Specification of unsafe playground equipment could result in injury and consequent liabilities.

f. Inadequate provision for drainage can result in flooding of foundations, basements, walkways, highway rights of way, recreation areas, and other kinds of facilities used by the public. This could present particularly serious hazards under the freezing conditions of Alaska.

g. Lack of adequate knowledge of plant materials and their functional charcteristics and interrelationships with various kinds of soils and other environmental elements can present at least these kinds of hazards:

   i. trees placed in soils whose structural characteristics do not provide its root system adequate physical support under stress of certain wind conditions.

   ii. root systems placed too near foundations of structures will ultimately weaken the structure.

   iii. certain toxic or otherwise harmful species could harm childern in a variety of ways.

   iv. specification of hardwood trees on highway medians or otherwise too close to rights-of-way present a serious hazard to motorists and their passengers.

   v. specification of plant materials on incompatible soils can result in deadwood that provides fire hazards.

h. Improper specifications for grading and filling can result in soil slippage and washing or even massive erosion.

3. HOW HAVE LANDSCAPE ARCHITECTS BEEN PREVENTED FROM PRACTICING UNDER PRESENT LAW?

Restraint from practice has occured:

a. under those conditions when Landscape Architects may not even submit a bid for contract because some portion of work they are trained to do has been allocated jurisdictionally to the purview of regulatory boards of related environmental design professions.

b. under those conditions where a call for bids specifies or falls under more general policy provisions of given private and public agencies requiring that the bidder hold a valid license as proof of minimum competency.

Existence of either or both of the two conditions given above not only by themselves may constitute a restraint of trade impediment within given jurisdictions but also becomes a particularly severe restraint on Landscape Architects seeking out of state work while their home state provides no licensure through which they may present a legally sanctioned proof of competence.

4. DON'T LANDSCAPE ARCHITECTS JUST WANT LICENSURE AS A STATUS SYMBOL?

Landscape Architects want licensure in order that the profession will not be marred by the adverse effect of not insuring competence of all practitioners whose work directly affects public safety. They recognize that their service-oriented activities are not readily evaluated by the lay public; average citizens may not be expected to have adequate knowledge to protect them from manifestations of bad practice.

Landscape Architects want licensure in order that they may compete, without restraint, for work both within as well as outside of their home jurisdictions.

5. WHY CANNOT LANDSCAPE ARCHITECTS BECOME LICENSED UNDER PRESENT LAW AS ARCHITECTS, ENGINEERS, OR LAND SURVEYORS?

The critical elements here are the separate and distinctly different definitions of the respective professions which reveal activities of often overlapping but quite distinct scope or range. There would be legally indefensible inconsistencies in not recognizing the horticultural background underlying the distinctly unique body of knowledge, and concomitant skills, through which their knowledge is manifested in the contemporary practice of Landscape Architecture. The specialized services offered by architects, engineers, and land surveyors do not derive from knowledge developed out of horticultural context. However, among the things Landscape Architects often do have in common with architects and with some kinds of engineers are design-oriented activities. Among the things Landscape Architects have in common with surveyors are knowledge and skills in topography and grading.

Another critical element lies with the educational background and other qualifications necessary for a candidate to fulfill in order to even sit for licensure examination of other professions. No person should be obliged to face unreasonable requirements that would prevent his sitting for examination. We should recall that provisions of due process must apply not only to license nolders but also to applicants.

6. WHAT IS THE FORMAL TRAINING OF LANDSCAPE ARCHITECTS?

After completing high school, there are several levels of education available in Landscape Architecture. These include vocational programs (certificates or Associate degrees), pre-professional programs (Baccalaureate degrees), undergraduate professionals degree programs (Bachelor of Science in Landscape Architecture), and graduate professional degree programs (Master of Science in Landscape Architecure or Master of Landscape Architecture). Vocational programs entail about two academic years of study and a summer of field experience. These programs normally focus on residential and commerical scale projects and emphasize practical knowledge, such as construction detailing, grading, horticultural practices, grounds maintenance, and business practices. The purpose of these programs is to train leaders for the landscape industry, thus studio courses stress detail scale design such as surfacings,

planting composition and minor structural elements. Upon completion, graduates of vocational programs enter supervisory roles in nursery or contracting firms and relatively few continue their formal education.

In recent years, undergraduate pre-professional degree programs have been developed at several universities to provide an academic foundation for advanced work in any one of several design disciplines. Seven schools, all with graduate level landscape porgrams, have instituted "generalist" programs that award either a Bachelor in Environmental Design or a Bachelor in Environmental Studies degree. These programs stress broad-scoped social science and natural science course work and offer only limited amounts of design studies and technical material, for graduates are expected to continue their professional developemnt in the Master's program.

By contrast, other undergraduate programs award professional degrees in Landscape Architecture and have a full compliment of design and technical education in their curricula. These programs are either four or five years in length with the latter generally providing for more elective opportunities and some individual specialization. It is estimated that about 80% of the graduates from these programs enter practices in professional offices or planning agencies. Of the remaining 20%, about half pursue graduate studies and the rest find employment in the landscape industry.

Graduate degrees, either M.S. or M.L.A., are available at approximately twenty schools in this country, frequently at the same institution as professional degree undergraduate programs. These advance programs require from one to three-and-one-half years of study depending on the applicant's background. For those with an undergraduate professional degree in Landscape Architecture, the advanced program usually amounts to a year-and-one-half or two years. For students coming with pre-professional degrees as well as those with non-design backgrounds, Master's programs normally require a residency of three to three-and-one-half years.

7. WON'T LICENSURE OF LANDSCAPE ARCHITECTS ADVERSELY AFFECT NURSERYMEN?

Nurserymen who are engaged in raising and selling plant materials to their customers will not be adversely affected by passage of a licensure law for Landscape Architecture. Activities of the two occupations, while related, are entirely different: a nurseryman's products are botanical, and a Landscape Architect's products are designs for envisioned works which usually include, but are not limited to, botanical elements. Moreover, the one deals in products while the other often provides only services; goods can be inspected by a prospective buyer, generally services cannot.

If some nurserymen are adversely affected by a licensure law, then it may be because they are engaged in design activity for which they may not have appropriate training or experience through which they obtain competence.

8. HAVE ANY LANDSCAPE ARCHITECTS BEEN DENIED HAVING PLANS ACCEPTED BY PRIVATE OR GOVERNMENT AGENCIES FOR LACK OF LICENSURE?

Yes. However, the more frequent consequence of lack of licensure is that firms which cannot afford to prepare plans for private or government agencies requiring licensure of its bidders simply do not enter the bidding process when they know they will be excluded under existing regulations.

9. DOES THE LICENSING BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS FEEL LANDSCAPE ARCHITECTS SHOULD BE LICNESED?

The answer is yes. At a meeting at the board on September 22, 1977 a resolution was unaminously passed "that the board support the concept of registration of Landscape Architects".

10. PRESENT LAW RESTRICTS LANDSCPAE ARCHITECTS FROM JOINING OTHER PROFESSIONALS IN A PROFESSIONAL CORPORATION. IF THIS RESTRICTION WERE ELIMINATED, WHY SHOULD LICENSURE BE NEEDED FOR LANDSCAPE ARCHITECTS?

In some states that kind of restriction exists. However, its elimination would still not remove the fundamental need for licensure of Landscape Architects for these reasons:

a. The basic purpose of licensure protecting public health, safety, and welfare would remain unachieved.

b. Without licensure Landscape Architects could not be prinicipals of such a firm. In consequence, engineers and architects would continue doing Landscape Architectural work in an activity where they have not been proven competent.

c. Removal of this restriction would not provide for licensure needs of individual private practitioners who are not members of such firms. Absence of benefit of licensure would discourage or prevent many one-man offices from being located on a given jurisdiction.

11. IS IT TRUE THAT ONCE LANDSCAPE ARCHITECRS ARE LICENSED, THEY THEN AMEND THE LAW TO RESTRICT THE OPERATION OF NURSERYMEN?

Under provisions of the law, no persons should be restrained from practicing Landscape Architecture so long as those individuals are able to prove their competence. Moreover, no persons should be required to face unreasonable requirements that would prevent their sitting for examination. However, where there are unqualified people engaged in the practice of Landscape Architecture, and thereby impinging on public safety, those people should be proven competent.

12. HOW MANY STATES CURRENTLY LICENSE LANDSCAPE ARCHITECTS? HOW MANY HAVE HAD LICENSURE REPEALED?

Thirty-eight states currently provide licensure for Landscape Architects. One state has, under provision of a hastily enacted sunset law, repealed an inadequate title act and is currently drafting a practice law that would replace it.

13. DO LANDSCAPE ARCHITECTS DESIGN BUILDINGS?

Landscape Architects do design some buildings such as park structures. However, Landscape Architects do not design habitable buildings.

14. WON'T LICENSURE OF LANDSCAPE ARCHITECTS INCREASE THE COST OF LANDSCAPE ARCHITECTURAL SERVICE TO THE PUBLIC?

It is possible that the cost of licensure may initially cause a small increment on some fees. However, experience indicates that these will soon become insignificant by comparison with the much larger effects of cyclical swings of economic cycles.

Here, again, a licensure operation should be of such effectiveness on fulfilling its stated societal purpose that it would be judged cost-effective.

Bruce G. Sharky, A. S. L. A.

Landscape Architecture / Land Planning / Recreation Planning

March 11, 1978

Mr. Douglas Ackley, President
Board of Architects, Eng' .eers and Land Surveyors
State of Alaska
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

RE: S.B. 416 and H.B. 655
Landscape Architecture Registration

Dear Mr. Ackley:

I am in receipt of your letter (unsigned) dated February 28, 1978 addressed to Honorable Bob Bradley, Chairman of the House State Affairs Committee. I appreciate your sending me a copy of this letter and feel obligated to respond.

Firstly, in your letter to Representative Bradley you indicate that after the initial contact with your board on September 22, 1977 (see attached letter dated September 22, 1977) we did not further contact with your board or any other professional organization as suggested by you. Perhaps we were not as diligent as we may have been, but as a small group we did make substantial efforts to contact other professsional groups during the early drafting stage of the landscape registration bill. In October I contacted the Alaska Professional Design Council (see attached letter dated October 31, 1977). It was only until last month -February 1978- that I was finally contacted by the Design Council to attend one fo their meetings. At the meeting and a subsequent meeting last week I was not able to obtain any substantive response.

On October 28, 1977 I attended the annual business meeting of the American Institute of Architects, held in Fairbanks. The attached letter dated October 28, 1977 supports my request to solicit input from that organization prior to submission of our bill. No action was taken during this meeting, nor two subsequent meetings wereby myself and several other landscape architects made presentations to the attending architects. Therefore we were unable to receive any input from the architects until after our bill was submitted to the Legislature. The Architects have more recently reviewed the bill in detail and I believe have submitted their recommendations to the Legislature.

In November, 1977 I and other landscape architects were invited to attend a meeting of the American Society of Civil Engineers. The invitation came after several months of request from me to be allowed to speak to the Civil Engineers to solicit their input on our bill prior to its submital to the Legislature. A copy of the draft bill was given to the Society to review as they requested. We received no feedback from them. I have personally called several times and asked the president of the Engineers Society if we could get together and discuss the bill. To this day I have not had any response. (see attached letter dated November 22, 1977).

3129 Lochwood Circle Anchorage, Alaska 99504 907/337-6932
Member of the American Society of Landscape Architects

As far as keeping you and your board informed after our early meeting in September, 1977, I must admit that we may have been at fault. For my part I was never contacted by your board or notified of subsequent meetings, however, I do believe the board was sent a copy of our draft bill prior to its being submitted to the Legislature. If your were not sent this draft, then I must assume responsibility in this area.

Both bills have been heard now by two committees: the Senate Commerce Committe, chaired by Senator W.E. Bradley and the House State Affairs Committee chaired by Representative Bob Bradley. During the hearings we of course provided testimony. But more importantly we have listened to the testimony given by others and in two areas feel that amendments are inorder. I am sending along with this letter a copy of our draft amendments to the landscape architecture registration bills. Please note that we are suggesting changes in the following two areas:

1. Reducing the number of landscape architects on the Board to just one member.

2. Amend the definition of the practice of landscape architecture under Section 30, item (15). This new definition directly responds to suggestions made by your board and of testimony thus far provided at the public hearings we have been in attendence.

With respect to the issue of public health, safety and welfare, many of the services that are provided by landscape architects directly effect the public. Proper planning and design of land areas, design of land form (earthwork grading), proper dispersion of surface water runoff and well designed underground irrigation systems are all areas that effect public health, safety and welfare. The fact that other professions that are registered in this state to practice and offer service in these areas exist should not result in restricting landscape architects to also practice in Alaska. We do not intend to restrict other professions from practicing in areas that they have historically been providing service. On the other hand we (the landscape architects) are presently restricted to practice in areas we have been educated and trained to provide service in and do so in 38 other states in the Union.

At this point Mr. Ackley I appreciate having received a copy of your letter. I do believe that some of the points have considerable merit and if followed through with on our part in the form of amending the present bills, should result in a better piece of legislation. Again thank you for your attention. If and when it is appropriate I certainly hope that we can meet again with you and your Board to further discuss the bills.

Very sincerely,

Bruce G. Sharky, ASLA

cc: Senator W.E. Bradley
Representative Bob Bradley
Representative Terry Gardiner
Senator Joesph L. Orsini
Representative Rick Urion

MARCH 11, 1978

DRAFT

PROPOSED AMENDMENTS TO S.B. 416 and H.B. 655

Section 1. AS 08.48.011
Maintain in its entirety with the following amendment to item (b), line 18:

"engineering, *one landscape architect*, and three architects."

Section 30. AS 08.48.341
Amend item (15), page 13 to read as follows:

"(15) practice of landscape architecture means professional service or creative work, the adequate preformance of which requires landscape architectural education, training and experience, professional services include consultation, *teaching of landscape architectural courses in institutions of higher learning*, research, planning, design, preparation of drawings, specifications, contract documents,and supervision of construction in connection with the *planning and design of land areas and exterior spaces* to the extent that the purpose of those services involve the preservation, enhancement, or improvement of natural land features *in the interest of protecting public health, safety and welfare. This is accomplished through competent design of land form, dispersion of surface runoff, laying out underground irrigation systems and layout of plantings. The above definition does not restrict those professions who have historically provided the above services from continuing to do so.*"

# # #

B. G. Sharky

Please note that this draft will be reviewed again and sent to Mr. Ross Hart in Juneau for his use in submitting amendments to S.B. 416 and H.B. 655.

HB654

THE SOCIETY OF
AMERICAN MILITARY ENGINEERS

ANCHORAGE POST

Honorable Terry Gardiner
House of Representatives
State of Alaska
Pouch V
Juneau, AK 99811

Dear Mr. Gardiner:

The Anchorage Post of the Society of American Military Engineers wishes to express its support for the proposed amendment to Alaska Statutes, Chapter 48, Architects, Engineers and Land Surveyors, to include Landscape Architects. This is a positive step in insuring quality and professional consideration in environmental design.

Recognition of Landscape Architecture as a professional service is recognition of design of the outdoor living environment as an art and science. This is important in a state as young and unique as Alaska. Design of the outdoor "built" environment must accommodate the fragile and changing circumstances to be encountered in this state. The Society of American Military Engineers is especially aware of the changing circumstances because of their association with the diverse military sites in the state. Understanding of the Alaskan environment can only be gained through education in the basics of land design and training in the varied environments. Examination and registration will help insure that education and training exist.

Landscape architecture must consider the interrelated parts of land design. Proper education and training provide knowledge in the use of mutually and environmentally compatible materials to fulfill human needs, while protecting the environment. Environmental quality is improved through proper site consideration, but may be degraded if that consideration is lacking. Therefore, certified professional services are required when analyzing the impact of land design on individual environments.

Recognition of Landscape Architecture as a professional service will help insure professional responsibility for landscape design. This in turn will provide insurance against misconduct and malpractice. Professional ethics for those with the title "Landscape Architect" will assure clients and consumers of a product that meets quality standards approved by knowledgeable people.

Adoption of the proposed amendment is important in insuring the highest quality in future environmental design in Alaska. A professional standard for land design would be a positive step for continuance and improvement in the quality of the Alaskan living environment.

Sincerely yours,

Jerome M. Tackes
President, Anchorage Post
S.A.M.E.

HB
664

KETCHIKAN MEDICAL SOCIETY

3100 TONGASS AVENUE - KETCHIKAN, ALASKA 99901

March 14, 1978

TELETYPE TESTIMONY TO HEALTH EDUCATION & SOCIAL SERVICES COMMITTEE

Ketchikan Medical Society wishes to record its opposition to House Bill 664. Historically, and by Alaska statute, optometry has been a drugless profession. For the good of the people of the state of Alaska, we believe that optometry should remain drugless.

H.B. 664 requires only that optometrists pass a single examination before this significant expansion in their role is permitted. The examination will either be given by the optometry board itself with no legislated previous training requirements, or be given by a recognized school or college following an optometry board approved course of study. There is no mention of criteria for approval. There is no mention of by whom the institution is recognized. There is no mention of accreditation or university affiliation.

Further, the bill contains no definition of a diagnostic purpose, and no provision for any penalty for use of drugs in conditions other than those approved by the board. There is nothing in the bill to prohibit an optometrist virtually any use of this broad list of medications, if that use can be extended to be called diagnostic. Since optometrists by their licensing statute cannot legally have had any experience with these drugs, and since use of these drugs is part of the wider experience of medical doctors, it does not appear that the public is protected by the inexperienced licensing of the untrained to the exclusion of more experienced and qualified medical doctors.

Although optometrists are portraying the drugs they seek to use as harmless, it is precisely because of their effectiveness that they are being sought. Any drug brings with its desired effects certain other undesirable effects and occasional very serious complications. Optometrists are not trained or qualified to deal definitely with any of these complications; to whatever extent the complication involves more than the eye the optometrist is excluded by licensing statute from making anything other than a layman's assessment. We believe that the public deserves better protection than the optometrists offer in this bill.

In summary, although H.B. 664 is laudably brief and seductively simple, we do not believe that it serves the best interests of the people of Alaska.

HB664

March 31, 1978

Rep. Charlie Parr, Chairman
Pouch V
State Capital
Juneau, Alaska 99801

Dear Mr. Parr,

I am writing in regard to House Bill 664. I do not feel optometrists should be allowed to use certain medications for the eyes. I feel it would be dangerous as they are not physicians and are untrained in the use of drugs for treating eye problems. I feel only trained physicians should be able to use medications and I urge you to defeat House Bill 664.

Respectfully,

Michele A. Bone

Michele A. Bone
Speech and Language Pathologist
P.O. Box 8340
Ketchikan, AK 99901

cc: Rep. Terry Gardiner
Rep. Oral Freeman
Sen. Robert Ziegler

HB 664

March 24, 1978

Rep. Charlie Parr, Chairman
Pouch V
State Capital
Juneau, Alaska 99801

Dear Rep. Parr,

As a Registered nurse with thirty years experience I ask you to give serious consideration to House Bill #664. Placing drugs in the hands of and allowing them to be administered by untrained persons poses a serious threat to the health of the consumer. Do not be mislead into thinking these drugs mentioned in HB #664 are safe, as they all have potential side effects and it is our duty to protect the people from possible harm by allowing medications to be administered only by trained medical people. I would like to go on record as being opposed to HB#664 and urge you to vote against it.

Sincerely,

Ethelbelle Kondzela

Ethelbelle Kondzela, R.N.

CC: Sen. Robert Zeigler
Rep. Oral Freeman
Rep. Terry Gardiner

EYE CLINIC OF KETCHIKAN
RONALD L. TOKAR, M.D.
Eye Physician and Surgeon
Post Office Box 8636
Ketchikan, Alaska 99901
Telephone
(907) 225-2656

March 9, 1978

Representative Charlie Parr
Pouch V
State Capital
Juneau, Alaska 99801

Dear Representative Parr,

As one of two ophthalmologists in Southeastern Alaska, I would like to reveal and explain my opposition to HB 664.

I recently finished my training as an ophthalmologist last June and now practice in Ketchikan. Below is a review of my training.

4 years undergraduate school---------B.S. Degree
4 years medical school---------------M.D. Degree
1 year internship
2 years general practice in Alaska
3 years residency in ophthalmology
8 months private practice

I have completed and passed a written examination of the American Board of Ophthalmology and later this year will take a two and one half day oral examination. The above is typical of an ophthalmologists training. Please compare it to an optometrists.

I believe that the use of the drugs discussed in HB 664 by a non physician will be hazardous to the public for two principle reasons. First, all of the drugs may have side effects. The optometrists lack the experience and training to safely control these reactions when they do occur. Enclosed is a sample of the inserts required by the Food and Drug Administration to be distributed with each drug. Please read these.

During my ophthalmology training program, a patient experienced a serious reaction after receiving dilating eye drops. The patient, an apparently healthy male in his twenties, underwent a cardiac arrest in the eye clinic after receiving the eye drops. Fortunately, the examining ophthalmologist was capable of caring for the patient who did recover. This is unusual, but can happen. I myself was examining a patient last year when he underwent a seizure which we felt was triggered by the use of dilating drugs.

My second objection is that both the optometrist and the patient will be lured into a false sense of security with the use of drugs by non physicians. Optometrists were traditionally trained to treat the eye with glasses and have no medical training enabling them to recognize serious pathology.

Enclosed is a copy of a letter sent to me by a Ketchikan optometrist. There are numerous defects in the reasoning of this letter. I would like to use an important one to illustrate a point. The statement that if a pathological condition is observed, it would be referred to a proper health care practitioner. Since I have been in Ketchikan (8 months) the writer of this letter has never referred a patient to me for evaluation of pathology.

One can then make several assumptions and I will leave these to the committee to discuss. One could go much further elaborating other arguments against HB 664. I am sure my colleagues will testify to these.

The opposition to HB 664 as you know is opposed by most Alaska Physicians. I would like it to go on record that each and every physician in Ketchikan is opposed to HB 664. You will soon be receiving a letter from the Ketchikan Medical Society stating this fact.

I would appreciate this letter be offered as testimony to your committee. Thank you.

Respectfully yours,

Ronald L. Tokar, M.D.

ALASKA STATE MEDICAL ASSOCIATION
1135 W. Eighth Avenue • Suite 6 • Anchorage, Alaska 99501 • (907) 277-6891

February 14, 1978

Representative Charlie Parr
Chairman, House HESS Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Representative Parr:

The Alaska State Medical Association Council has reviewed HB 664, An Act Relating To The Practice Of Optometry. We see no purpose identified or expressed within the substance of the Bill. We further see no areas where the public interest will be served by its passage and several areas where compromised eye care, duplication and cost increases are possible if not likely.

At the outset, please understand that the ASMA properly has no interest or intent to interfere with the practice of optometry in Alaska. However, if an enlargement of the scope of optometry into the sphere of medical practice is comtemplated, it reasonably becomes our concern for the welfare of the public, not a simple jurisdictional dispute.

Optometry by derivation, definition, tradition, training and current practice means measurement of the eye for refractive error and a prescription of corrective lenses. Current practices also allows dispensing and sale of lenses and spectacles by the prescribing optometrist.

The current statute defining optometry is unfortunate in that it suggests diagnosis of visual impairment, apart from refractive error, lies within the responsibility of optometry.

Non-refractive visual impairment may be a most difficult and subtle medical diagnostic problem, at times challenging the combined expertise of ophthalmologist, neurologist, radiologist, and internists, and requiring sophisticated diagnostic equipment. Causes range from simple cataracts to subtle brain tumor, from transient vascular insufficiency to obscure metabolic disorders. The visual problem may be the first and only lead to a serious medical disease. Almost all non-refractive visual impairments will come to confirmatory diagnosis and treatment by a physician. It goes without saying that missed or delayed diagnosis can have serious potential consequences.

Before extending the scope of optometry, well beyond refraction and the sale of contact lenses and spectacles, into the intricate area of complex ophthalmological diagnosis, we ask that you assure yourself of the following:

(1) That there is a clearly demonstrated and defined unmet public health problem, that this legislation will solve it, and it is the most appropriate solution.

(2) That the general level of training of the practicing optometrist in Alaska at present is at a standard which will preclude frequent mis-diagnosis, delay, duplication of expense and inappropriate trials of corrective lenses for non-refractive disorders of the eye.

(3) That the use of ophthalmologic drugs in the practice of optometry is free of risk.

(4) That the expanded drug use is necessary and essential to increased accuracy in refractive error diagnosis.

We feel the answers to the above are not obvious, we see no urgency to enact the legislation without the most careful study of the implications and therefore urge that you allow ample time for its consideration.

Sincerely,

Winthrop Fish, M.D.
Chairman, Legislative Committee

WF:mlm
cc. ASMA Council
ASMA Legislative Committee

State Medical Board
Conference Call
February 2, 1978

A conference call was held by the Board of Medical Examiners on February 2, 1978, at 10:30 a.m., Juneau time.

Those present were:

Thomas Harrison, M.D.
Hilbert Henrickson, M.D.
Hugh Gellert

Also present was Loretta Prescott, License Examiner, from the Department of Commerce and Economic Development.

On February 6, 1978, Loretta Prescott, License Examiner, polled the remaining medical board members by phone:

Dr. William Compton - unavailable
Dr. Gary Walkup - unavailable
Louise Beighle - unavailable

Dr. Thomas Stengl voted yes to the following, constituting a quorum:

RESOLVED, that the Alaska State Board of Medical Examiners, requests that House Bill 664, "An Act relating to the practice of optometry." be defeated, as the State Medical Board feels that it allows the use of dangerous drugs by unsupervised, non-medical personnel.

LP/sa3/34

THE ALASKA HOSPITAL AND MEDICAL CENTER, Inc.

February 7, 1978

House Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: House Bill No. 664
"An Act Relating to the Practice of Optometry"

Gentlemen:

The Medical Staff of The Alaska Hospital and Medical Center at their annual meeting, January 25, 1978, unanimously (75 members present) passed a motion to disapprove House Bill No. 664.

The Medical Staff feels that the use of medication requiring a prescription to purchase, to use and to dispense should be reserved for physicians. The drugs listed in the bill, namely: topical anesthetics, mydriatics, cycloplegics, and myotics, all have potentially serious side effects including anaphylactic shock, cardiac arrhythmias, significant elevation of blood pressure, stroke, psychosis, convulsions, precipitation of gluacoma, cataracts and retinal detachments. Any of these conditions, even if they would be recognized by an optometrist, could in no way be treated by an optometrist.

It is for this reason the Medical Staff feels very strongly that it is in the best interest of the citizens of Alaska to keep the use of potentially harmful and toxic drugs under physicians specifically trained in such areas and licensed in the state to use such preparations in the cure of the sick and in the diagnosis of disease states.

Sincerely,

C. Little, M.D.

C.J. Little, M.D.
President/Medical Staff

JP:CJL:lw

cc: House Judiciary Committee
Anchorage Ophthalmologic Society

2801 DeBarr Road • Pouch 8-AH • Anchorage, Alaska 99508 • Phone: (907) 276-1131

BARTLETT MEMORIAL HOSPITAL

P. O. BOX 3-3000 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2611
MILE 3 — GLACIER HIGHWAY

March 16, 1978

The Honorable Charles Parr, Chairman
Health, Education & Social Services Committee
House of Representatives
Pouch V
Juneau, AK 99811

Re: HB664 - Optometry

Dear Representative Parr:

The Juneau Medical Society is unanimously opposed to granting optometrists the right to practice medicine. We do not feel that it is in the best interest of our community health program.

We respectfully request that you take negative action on this piece of legislation.

Respectfully yours,

Estol Belflower MD

Estol Belflower, M. D., President
Juneau Medical Society

RUTHANN SAXTON SELDEN

March 10,1978

Dear Dr. Grendahl,
The PEER Group of Alaska (Practitioners Entering Expanded Roles) voted to oppose HB664 at our March 7, 1978 meeting. We are making our decision known via the Legislative Coalition of Health Care Professionals and this letter.

This is a serious issue. To be specific, we feel that the educational background of an optometrist does not include the essential indepth knowledge of how to correctly treat the untowarded side effects that may result when medication is used on the human body. As you know, some patients may be in life threatening situations as the result of the use of a medication that their body is sensitive to.

We as Nurse Practitioners do use medications that have possible untowarded side effects; obviously, we do not have the indepth knowledge of pharmacology and emergency medicine that the physician does. However, our role is in collaboration with a physician.

Therefore, in the interest of the people of the State of Alaska, we are making our decision known.

Sincerely,

Ruthann Selden, R.N., P.N.P.
Chairperson
PEER Group of Alaska
8816 Abbott Loop Rd.
Anchorage, Alaska 99507

HB664

DRS. WILSON AND WILSON, P.C.
ARTHUR N. WILSON, M.D.
JAMES A. WILSON, M.D., F.A.C.S.
ARTHUR N. WILSON, JR., M.D.
P.O. BO~~X 219~~ 8678
KETCHIKAN, ALASKA 99901

March 6, 1978

Senator Robert Ziegler
U. S. Senate
Washington, D. C. 20510

Dear Senator Ziegler:

We have received a letter from Dr. Ed Craig under date of March 2, 1978. This letter is enlisting our support for HB664 which has been introduced into this legislative session by the Alaska Optometric Association. It states that the cover letter was sent to the various representatives to explain why optometrists need to use diagnostic drugs.

We have read this letter and also a letter under date of February 6, 1978 relative to the same questions and the copy of House Bill #664 introduced on January 19, 1978. Beside this, there was enclosed a special issue of the ACASCOP, volume 2, #9, June 16, 1975 which has the pharmacology curriculum guidelines for continuing education courses.

As stated in the letter of February 6, historically optometry has been a drugless profession. The optometrists have been treating refractive errors of patients and prescribing lens and various exercises for cases of defective vision.

The practice of ophthalmology as conducted by physicians goes much beyond this. There is so much to be learned in the history of various diseases. There is so much of importance in using drugs in the treatment of eye diseases. There are so many interactions between drugs that we simply cannot go along with the idea that optometrists should be using these different drugs.

We do not believe that all of these principles can be learned satisfactorily in a continuing education program such as contemplated in the guidelines behind this bill. We think there are too many chances of errors in treating patients where the practitioner has not had the equivalent of a medical education.

Very truly yours,

Arthur N. Wilson M.D.
Arthur N. Wilson, Jr. M.D.
James A. Wilson M.D.

Arthur N. Wilson, M. D.
Arthur N. Wilson, Jr., M. D.
James A. Wilson, M. D.

ANW/lj

cc: Honorable Oral Freeman
Pouch V
Juneau, Alaska 99811

cc: Honorable Terry Gardiner
Pouch V
Juneau, Alaska 99811

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

March 29, 1978

Representative Terry Gardiner
Chariman
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

It's my understanding that in the near future, you will be considering House Bill 664, an act relating to optometry. This Bill, if passed, would give optometrists (nonphysician) the power to use "diagnostic drops" in the eyes of their customers. There are several points that should be made, and they are as follows:

1) As concerns "diagnostic drops," the general nomenclature is certainly a misnomer. These drugs that they are asking to use are only called "diagnostic drops" by optometrists and not by physicians. It should not be forgotten that drops do not diagnose, people diagnose, and people with the proper training, experience, and background to make these determinations are physicians who have completed their academic and clinical training.[1]

2) Dilating the eye is not a prerequisite to making a diagnosis of eye disease. Dilating drops are not a prerequisite to supplying children with the proper glasses correction. Anesthetic drops are not needed for the diagnosis or the presumptive diagnosis of glaucoma.[2]

3) There is no maldistribution in Alaska between those that have the concern for providing eye care to our residents.

4) There is a high incidence of narrow angle glaucoma in residents in Alaska, particularly among the native population. Narrow angle glaucoma is a severe high pressure in the eye that's caused by dilating the eye, specifically caused by the drops that the optometrists want to be able to use.[3]

5) It is quite important that anyone involved with the use of medications, in any fashion, be capable of handling any systemic or local reactions to these medications, no matter how uncommon they may be. Optometrists have absolutely no training or preparation in the management of these potentially serious and, in some cases life threatening, untoward reactions that happen occasionally with the use of these medications.[4]

6) The trend in the United States toward this type of legislation, which has been going on now for some three years, is to defeat this sort of movement. In 1977, 17 states defeated similar legislation; the legislation was passed in five states, four of which are considered rural

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states, the major argument being that optometry provided coverage in areas where no medical care was available. That is not the case in Alaska.

7) It should be mentioned that ophthalmology has no financial interest in this type of legislation and, as a matter of fact, this is not special interest legislation in any sense of the word. Ophthalmology is responding because we are the best qualified people to ask for an opinion.

8) Consumer protection should be quite prominent in your minds. It is evident from efforts in other parts of the United States that optometry is lobbying, both in the public sphere and in the legislative halls, to be the primary eye care provider across the United States. It is my contention that this further confuses the public as to who they are seeing for their eye care, rather than gives them any advantage.

9) It would seem that, of all the people available for comment, it would be those people who are both optometrists and ophthalmologists (physicians). I refer you to an article by Roger L. Hiatt, M.D., who is a former optometrist and now a physician, who is Chairman of the Department of Ophthalmology at the University of Tennessee College of Medicine in Memphis.

Thank you very much for your time in reading this brief summary. I would hope that you will have an opportunity to peruse the reference material that is included, that is, copies of letters that have been sent in the past to members of the Health, Education and Social Services Committee in the Alaska State House of Representatives.

Sincerely,

Sam A. McConkey, M.D.

SAM:ls

HB 664

March 21, 1979

To: Rep. Charlie Parr

Re: House Bill #664

Dear Rep. Parr,

I am very concerned about the pending legislation that would allow optometriststhe legal permission to use certain drugs. I want you and your colleages to defeat this proposal for the following reasons:

I have had direct experience with optometry in Arizona, Oregon and in Alaska that has shown me that as a group., optometrists are very resistant and hesitant to refer their patients to physicians when the optometrist observe a medical problem or the signs of a potential medical problem. I have seen this trend activity result in serious conditions for a member of my family and others. I have seen this happen in Ketchikan.

While I believe some optometrists are probably ethical, I fear that many engage in the above described activity. They do this because they don't want to lose patients and therefore business. It only takes a few to endanger many members of our society.

The drugs in question may be relatively harmless or potentially dangerous, I don't really know. I strongly feel that by allowing optometrists the use of some drugs, this will reinforce and promote their tendency to not refer medical problems to the appropriate professionals.

I sincerely hope that you recognise the dangers in what I've described. These are the reasons I'm against this bill and why I want you to vote against it.

Thank you for your consideration,

Stanley J. Bambauer

Stanley J. Bambauer
2141 Third Ave.
Ketchikan, AK 99901

copies to Rep. Terry Gardiner
Rep. Oral Freeman
Sen. Robert Ziegler

Pouch V
State Capitol
Juneau, Alaska 99801

HB 664

South Central District Dental Society

P.O. BOX 4-1800
ANCHORAGE, ALASKA 99503

March 28, 1978

Representative Charles Parr, Chairman
House HESS Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

We, the South Central District Dental Society, wish to go on record as being opposed to HB 664, Practice of Optometry. Our position is based on information gleaned by the dental society that the current level of clinical and educational experience of the Alaskan optometrist is inadequate to take on responsibilities incurred with the administration of the drugs they requested in this bill.

Sincerely,

William P. Fell, D.D.S., President
South Central District Dental Society

cc: Jim Patterson, M.D.
Fred D. Bast, D.D.S.
Phillip L. Locker, D.D.S.
Mr. Henry Pratt

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

February 7, 1978

Mr. Charlie Parr
Chairman
Health, Education and Social
Services Committee
Alaska State House of Representatives
Alaska State Capitol
Room 112
Juneau, Alaska 99811

Dear Mr. Parr:

On behalf of the physicians in the State of Alaska who are concerned with eye care, I would like to again thank you for giving me some time out of your obviously quite heavy schedule in order that I might become better acquainted with House Bill 664, an act relating to optometry. I was able to see several members of your committee on my recent visit to Juneau and hopefully will have an opportunity to introduce myself to the remainder when I get to Juneau in the future. I plan this to be the first of several background papers that you and your committee might wish to consider in your deliberations on House Bill 664.

I think it is appropriate that I give you some background into my education and status within the ophthalmologic community in Alaska. I received an undergraduate degree in premedicine at West Virginia University in Morgantown, West Virginia in 1962. I had my medical school training at the Medical College of Virginia, graduating with a degree of Doctor of Medicine in 1966. I served a year of surgical internship and a year or surgical residency at the same institution, completing that course of study in 1968. In October of 1968, I was inducted into the armed forces as a surgeon with the United States Air Force, stationed at Eielson Air Force Base near Fairbanks, Alaska. Following a 30 month tour of duty, I was in the private practice of general medicine in Fairbanks, Alaska for one year. In 1972, I became associated with the Medical University of South Carolina in an ophthalmology residency program, completing that course of study in June of 1975. From January until March of 1975, I was also a teaching fellow in ophthalmology, concerned with the education of medical students at the Medical University of South Carolina. In July of 1975, I returned to Fairbanks, Alaska and have been in the private practice of ophtoalmology with the Eye, Ear, Nose and Throat Clinic since that time. I am a Diplomat of the American Board of Ophthalmology. This accrediting board was the first medical specialty board established in America at a time when optometry was in its infancy and long before licensing boards for optometry existed. The privilege to practice my specialty is the culmination of 13 years of post high school education. This is in contrast to the average six to eight years spent by optometrists in post high school education today and is in greater contrast to the four years or less post high school education of approximately 50% of all optometrists presently practicing in the United States.

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WHAT OTHER STATES HAVE DONE

House Bill 664 is a continuation of a nationwide move on the part or organized optometry to be legislated into the practice of medicine. Since 1971 until 1977, nine states had passed similar laws. In 1977, as of August the 25th, 14 states had denied the use of drugs to 8,275 optometrists. There were five states that passed drug related optometric bills. Four of these states, namely Montana, Wyoming, New Mexico, and Kansas, are certainly in the category of rural states and indicates that the major direction of optometry toward pressing this legislation today is most certainly in rural areas. The defense against that argument that optometrists can provide their care where no ophthalmologists are available, is as follows: In those communities where no ophthalmologists practice, there are physicians with medical "know-how" to deal with eye problems on an urgent basis and refer them for ophthalmologic care to nearby cities. A colleague of mine, Dr. Charles Bobo, Greenwood, South Carolina, studied the population that presented to a small rural community hospital emergency room over the course of one year from July 1, 1975, to June 30, 1976, and in his independent study, showed that 80% of the patients seen in this emergency room sitting were capably treated by the general practice family type physician and only 20% of those needed to be seen by an eye specialist. This certainly refutes the attempt by ambitious optometrists to make a case for being allowed medical functions in rural areas by claiming that there are too few ophthalmologists. The Eye, Ear, Nose and Throat Clinic in Fairbanks, Alaska, of which I am a partner, has, for years, been carrying out not only ophthalmologic but ear, nose and throat clinics in remote areas and in bush communities for the care and welfare of patients that prefer to live in a rural setting. It might be mentioned that our prices for these clinics are exactly the same as they are in our offices in Fairbanks, Alaska.

Find enclosed a copy of some random court rulings as to what other states have had to say in defining optometry and optometric responsibilities.

I will follow this report with others over the next several days, outlining various other points of interest concerning consumer protection and other pertinent data as may be important in your committee's consideration of this bill.

Sincerely yours, I remain,

Sam A. McConkey, M.D.

SAM:ls
cc: Representatives: M.F. Beirne
Don Bennett
Thelma Buchholdt
C.V. Chatterton
Samuel A. Cotten
Alfred C. Nakak
Al Ose
Randy Phillips

OPHTHALMOLOGIST — OTOLARYNGOLOGIST — PLASTIC AND RECONSTRUCTIVE SURGEON

WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
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RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

WILLIAM W. WENNER, M.D.

EYE, EAR, NOSE & THROAT CLINIC

February 8, 1978

Representative Charlie Parr
Chairman
Health, Education and Social
Services Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Parr:

This is the second in a series of background reports that I hope will be valuable to you and your committee in your deliberations of House Bill 664.

CONSUMER EFFECTS AND CONSUMER PROTECTION

As regulations evolve to guide the delivery of health care under a federalized system, the role of paraprofessionals in medicine is being defined. A short time ago, most optometrists were "eye examining - glasses fitting" employees of chain and jewelry stores. Now they are a national political effort attempting to legislate themselves into the position of primary eye care practitioners; House Bill 664 is such an attempt, and as presented, this bill is vague, illogical, and unacceptable and is not in the public interest.

Optometry organized for its present effort many years ago and began to implement programs for presenting generally persuasive nonmedical evidence to legislators in many states recently. Before medicine could rally its forces to articulate the logic which is clearly on the side of medicine and the public, several legislatures were persuaded to transform optometrists into quasi-physicians.

Ophthalmologists have been forced to assume responsibility for protecting the public health against optometry. This situation is unfortunate because optometry was once respected for many decades by medicine and the public for having provided vision improvement (not health care) for millions of Americans. The result of their present legislative attempts to intrude upon the practice of medicine could be continuous disharmony and perhaps even the destruction of optometry as a respectable science. Nurses, ambulance attendants, and others who have been trained under the supervision of medicine are appreciated, enjoy a good reputation, and are classified as paramedical personnel, but optometrists insist upon being nonmedical and refuse to accept medical supervision. It is possible for optometry to join the American health care delivery system under qualified medical supervision if vision care is to be included, as is currently done in the U.S. military services and in other countries; but until then, optometry is risking its reputation as a fine profession and the state legislators are being encouraged to transform optometrists into quasi-physicians by legislative fiat which is not in the public's best health interest.

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A recent poll nationally showed that the public fears blindness second only to cancer. Americans deserve to expect better primary care for possible eye or related bodily disease and not what optometrists are remotely prepared to offer. Despite the claim of their nonphysician educators, optometrists, by background, training, and experience, do not have the capability to diagnose medically related eye problems or eye diseases, drops or no drops. The diagnosis of disease is the practice of medicine. Optometrists are not trained to practice medicine. Many individuals can recognize departures from normal and even make diagnostic guesses, but definite diagnosis and the ability to recognize fine differences between one disease and another rests solely with the physician. It requires understanding, not only of disease but also knowledge of its response to medical and surgical methods of treatment. Ophthalmic diagnosis further requires an understanding of diseases as they effect not only the eye but the body as a whole. Only an ophthalmologist, schooled first in medicine, has this ability. We can not divorce the eye from the human body.

Ophthalmologists and organized medicine have no vendetta against optometry. Optometrists practicing in their traditional role are needed. They are a value testing for glasses and performing those functio for which they have education and experience. The concerted political effort by optometry to become the primary eye care group, however, is not acceptable, logical, or reasonable. Physicians look upon this with alarm. It is a serious threat to quality eye care and patients will suffer. Optometrists are not able to make medical determinations because it is not within the scope of their training. By contrast, legally limiting the profession of optometry to the area of activity in which they are trained to function will not reduce their effectiveness. It will help safeguard their whole profession from the potentially irresponsible action of a few and will promote the health of the public.

If all that I have said is true, then one might reasonably ask why an expansion of the traditional role of optometry is being considered. The answer lies in two areas primarily. First, the desire of legislators to contain the cost of medical care, and second, the need for optometry to improve its collective status.

The legislators have been lead to believe that if optometrists provide basic eye care, the cost might be less than care provided by ophthalmologists. The hypothesis seems attractive on the surface, but in truth, optometrists tend to over prescribe glasses for minimal refractive errors; whereas, ophthalmologists do not. Thus, the total cost of examination and glasses by an optometrist often exceeds that given by an ophthalmologist. If lessened expense is the object, refractive care delivered by trained ophthalmic assistants working under the direct supervision of ophthalmologists costs less and gives the patient better care. Such care now exists in certain prepaid health plans and university eye departments. Duplication of effort and poor referral routes also raise the cost of eye care given by optometrists. Frequently, a patient with a serious eye problem first consults an optometrist for examination, is referred on to the patient's physician for a reexamination, and finally sees the ophthalmologist, who should have been consulted in the first place. Too often, optometrists are reluctant to refer directly to an ophthalmologist, and this custom is expensive.

Optometrists, as well as other paraprofessionals, desire to improve their status. This need is no small factor motivating optometrists to spend large amounts of money and personal effort as they move to "expand the scope of optometry." The way to gain this expansion, as organized optometry sees it, is not through education but by legislation. The public relations experts for optometry have coined phrases for optometrists like "GP's of the eye," "dentists of the eye," and "optometric physicians." Such labeling is fraudulent and misleading. In the Optometric Weekly of July 7, 1977, there was a statement that an expanded definition of optometric services in the Army had been approved. This was not true, has been refuted, and has resulted in the issuance of a mandate from the United States Department of Defense that there shall be medical supervision of optometrists in all branches of the military. Yet optometry has loudly and falsely proclaimed in the state legislatures of this country that civilian optometrists should be allowed the unfettered use of eye drops like their brothers in the military.

Of late, we have seen advertisements in leading newspapers in the country and heard radio ads inserted by state optometric societies using material supplied by the American Optometric Association which are deliberately false and misleading, particularly in those densely populated states whose legislatures have not seen fit to grant optometrists the right to use drops and diagnose or treat eye disease. These ads are now being prohibited by the state attorney's general and departments of consumer protection.

In the summer of 1977, the Washington Society for the Prevention of Blindness successfully stopped an optometric advertisement aired in the guise of a public service announcement: "The Washington Optometric Association reminds you that an eye examination will detect early symptoms of diabetes, arteriosclerosis, and hypertension." Excerpts of a protest to the Consumer Protection Division of the Washington Attorney General's office prompted removal of this fraudulent advertising after the Washington State Attorney General said in part, "This health service message, couched in such broad terms, might have the capacity to mislead a layperson to expect and rely on a wider range of medical services than are actually obtainable from optometrists."

Many optometrists are not enthusiastic about organized optometry's effort to encroach upon the practice of medicine. Recently, Richard Ball, writing in the Optometric Weekly, posed a question to his fellow optometrists when he wrote, "Should we be first class O.D.'s or second class M.D.'s."[1] This stand is supported by the deans and some professors of several colleges of optometry.[2] Also, many optometrists are becoming gun shy because of the mounting resistence to their legislative attempts to encroach upon medical practices. Organizations such as Leagues of Women Voters, labor unions, federations of state, county, and municipal employees, and leading newspaper editorials throughout the land oppose the ruling of pseudophysicians of optometrists.[3] They recognize that these back door attempts at redefining optometry only serve to further confuse the public as to the capabilities of the two practitioners in the eye care field. A number of ophthalmologists who were formally optometrists and then went to medical school and by way of the ophthalmology residency route became qualified ophthalmologists,

vigorously oppose this legislation because they know better than all others that the medical eye care rendered by eye physicians is the only medical eye care that should be available to the public."

Optometrists and ophthalmologists should compliment and support each other. Disregard for excellence, such as would result from enactment of the proposals put forth in Bill 664, will adversely effect the superior level of eye care currently offered to patients in Alaska.

In closing, I might quote from a thesis entitled, "The Expansion of Optometry into Medical Practice": "The regulation of the practice of optometry is not for the benefit of the licensees but for the benefit of the state and its people...no where does case law state that public protection will be qualified, i.e., that...the risk (may be increased) 'a little bit' but not 'a lot.' The intent is protection...the language is explicit."

Please find enclosed some pertinent editorial comments, as well as some consumer articles that have appeared in other parts of the country as concerns this legislation. Thank you very much for your time in reading through this material.

Sincerely,

Sam A. McConkey, M.D.

SAM:ls
cc: Representatives: M.F. Beirne
Don Bennett
Thelma Buchholdt
C.V. Chatterton
Samuel R. Cotten
Alfred C. Nakak
Al Ose
Randy Phillips

REFERENCES

1. Ball, R., "Should we be first class O.D.'s or second class M.D.'s," Optometric Weekly, volume 67, page 874 through 895, 1976.

Optometric Weekly, April 3rd, 1976, James C. Miller, O.D., Mappanee, Indiana, "(I) think optometry has too many quasi-physicians now! If these optometrists want to be physicians, they should have gone to medical school...if we believe the end result will be to our benefit or to the benefit of the public, we are inane."

In Optometric Weekly, April 3rd, 1976, under a column headed "Vox Oculi," over half the optometrists writing in agreed that they could never appreciate the difficulty and intensiveness involved in treating eye disease until he or she is educated to a point of being able to handle it on a daily basis. "There is no present need for the move and the necessary education is not available for optometry to attempt to secure drug utilization." Richard Ball, American Optometric Association, Interprofessional Relationships Committee.

September 15, 1976, American Optometric Association News, James A. Rakes, optometric resident, V.A. Hospital, Lexington, Kentucky. "The day will come when optometrists can treat disease with the approval of ophthalmology, but they will have to earn it through the same hard work that ophthalmology residents must go through. There is no shortcut to therapeutics."

Optometrist, Philip C. Lafrance, Laconia Eye Clinic, Laconia, New Hampshire, "Optometrists, in their many years of training, are not adequately trained to correctly define an eye disease."

2. Dean Henry B. Peters of the University of Alabama School of Optometry writing in the Journal of the Americal Optometric Association, June, 1977, said, "not one of our schools is prepared by either faculty resources or available clinical experiences to accept this challenge (of preparing optometrists to treat eye disease) at the present time." "Optometric educational institutions have serious responsibilities within the present practice of optometry and precious few resources to carry them out...the resources necessary to adequately prepare students and practitioners to treat eye disease are simply not available." "It is going to be difficult or impossible...to provide the educational requirements for the expansion of optometry into the area of treatment of ocular disease."

Meredith W. Morgan, O.D., Dean emeritus of the School of Optometry of the University of California at Berkley, "As far as I know, there is not a school with the curriculum adequately designed to educate students in pharmaceutical therapy and there is not a school with adequate resources to establish such a curriculum."

3. New York Federation of Women's Clubs, Inc., April 30, 1976, a drug bill in New York State. They took a public stand against the passage of this bill. The New York State AFL/CIO, a nonmedical union, advised its constituency that "optometry is not a medical profession and optometrists are not engaged in medical practice. Optometry is confined to a limited area of the measurement for and fitting of eye glasses that traditionally is outside medicine." Please find included copies of several editorials from leading newspapers throughout the country.

4. Five optometrists who furthered their education by going to medical school and became M.D.'s (ophthalmologists) have testified as follows: "Although we had courses in anatomy, physiology, histology, and many other scientific disciplines, including some courses about drugs, our training was superficial compared to medical school training. Furthermore, it was directed with an entirely different perspective in mind, that of examining the eye for vision defects and correction thereof." The five M.D.'s who thus spoke out in unison are Charles Denton, O.D., M.D.; Roger DeShaies, O.D., M.D.; Roger L. Hiatt, O.D., M.D.; Marshall Johnson, O.D., M.D.; and William Roberts, O.D., M.D.

American Optometric Association News, September 15, 1976, James A. Rakes, O.D., an optometric resident at the V.A. Hospital in Lexington, Kentucky, "An optometrist will never appreciate the difficulty and intensiveness of educating the ophthalmology resident until he sees it on a daily basis." He also noted that the experience that he was having had "opened his eyes to the inadequacy of the average optometry student's background in pharmacology and pathology."

THE ATLANTA CONSTITUTION

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PAGE 4-A, WEDNESDAY, JANUARY 11, 1978

Pulse of the Public

Optometrists and Ophthalmologists

MARIETTA—The controversy over Senate ill 20, which would allow optometrists to use angerous drugs, is an issue very few people an address based on first-hand knowledge and xperience.

I am one of only three people in Georgia a position to do so. Currently, I am an oph-almologist (M.D.) practicing in Marietta. An phthalmologist is an eye specialist. Prior to ecoming an ophthalmologist, however, I was a optometrist (non-physician).

After completing medical school to be-ome an ophthalmologist and having attended ptometry school earlier, I can say without servation the difference in an optometrist's aining and an M.D.'s is overwhelming. The phthalmologist's training is essential to per-orm medical services and to safely use drugs.

I became an ophthalmologist because I anted to be allowed legally to diagnose and eat medical and surgical eye disease. To do requires the use of drugs. As an optometrist was neither trained to use drugs nor did I ed them to perform the services for which I d been licensed.

The training an optometrist receives does ot compare to the training of a medical doc-r. Although optometric training has been mewhat improved since I was a student, it ill remains inferior to that of an M.D. Anyone ggesting that an optometrist is professionally uipped to use serious drugs is playing a dan-rous game with human lives and precious e sight.

The drugs involved in S.B. 20 are power-l. They have no place in the optometry ofession. The public should not be subjected use of the drugs by optometrists who are not ained to practice medicine.

There are no short cuts to medical exper-tise. The same option I exercised is available to every optometrist in Georgia. If an optome-trist wants to practice medicine, that optome-trist should be required to become a medical doctor as I have.

IRVING T. STALEY, M.D.

Opticians Oppose Bill

DUNWOODY—The Georgia Society of Dis-pensing Opticians, which has over 600 state-wide licensed members, strongly opposes Sen-ate Bill 20 which would allow optometrists, who are not medical doctors, to use diagnostic drugs in eye examinations.

Opticians, who are skilled technicians licensed to fit, adjust, and dispense eye glasses from the prescription of an ophthalmologist or optometrist, serve an important and unique role in the delivery of eye care to the public. Because of our position in the area of public eye care, we are compelled to express an opin-ion regarding S.B. 20. Ophthalmologists are medical doctors (M.D.s) who specialize in the treatment and diagnosis of medical and surgi-cal eye disease. Optometrists are not medical doctors. Optometrists are licensed to evaluate the eyes for visual behavior and prescribe glasses accordingly.

The clinical and patient training of an optometrist is unequivocally inferior to that of the ophthalmologist. To allow these non-physi-cians to use drugs which are unnecessary in eye screening examinations poses an unwar-ranted, serious hazard to public health.

Optometrists are not trained sufficiently to treat reactions which can arise in the process of administering drugs; moreover, the public should not be subjected to serious drugs un-necessarily.

The greatest danger to the public should S.B. 20 become law, is mis-diagnosis and delayed recognition of disease. The proper legal role of optometry is not to make specific diagnosis and determine whether a patient is to be treated or not, but to screen for the pres-ence of eye disease in the course of an exami-nation. To do otherwise constitutes the practice of medicine which is not the role of the op-tometrist.

As president of the Georgia Society of Dispensing Opticians, I, along with our state-wide membership, vigorously oppose S.B. 20 in the best interest of public health.

DAVID F. MELDRUM

Letters will be subject to standard editing and must bear the writer's signature and address. Short letters are best. On request the writer's name will be withheld.

The Boston Globe

Davis Taylor Chairman of the Board and Publisher

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Doctoring the eyes

Public confusion about the distinction between ophthalmologists and optometrists is understandable. Both are called "doctors," although only ophthalmologists actually have medical degrees, and both diagnose and treat eye conditions. But the distinction between the two professions has always been blurred and ophthalmologists fear that a bill allowing Massachusetts optometrists to administer drugs during eye examinations would further confuse the public, lead to missed diagnoses of serious eye diseases and endanger public health.

Optometrists are seeking the legislated right to use drugs, in the form of eye drops, for three kinds of examinations: local anesthetics to aid in measuring pressure on the eye, mydriatics to make the pupil larger and give a better view of the eye's back wall, and cycloplegics to eliminate muscular movements that hamper thorough examinations.

But some of these drugs can be dangerous. In some cases, severe nervous disorders have resulted from examinations in which the drugs have been used. Convulsions are rare but known to occur. Death has also resulted from application of even these mild, surface-applied drugs, although also rarely.

Optometrists argue that they are fully trained today to treat the occasional negative reaction to eye drugs which they wish to use. In Massachusetts, for instance, optometrists undergo four years of schooling after receiving their undergraduate degree, which often is in the sciences. They say that they are taking more drug application training, both in class and in clinics, than is needed for the limited authority they are seeking. They point out that 22 states, including Rhode Island and Maine, have already passed legislation enabling optometrists to apply diagnostic drugs and that serious complications have been negligible.

Nevertheless, serious complications are a possibility and patients have a right to be secure in the knowledge that a medical technique used by a doctor, a paraprofessional, a nurse or anyone else in the health delivery field is safe. They also have the right to know that should a complication arise they will be quickly and properly treated.

The Massachusetts legislation, H6670, has passed the House but received an unfavorable report from the Senate Ways and Means Committee. It is scheduled for a floor vote, possibly today. Senators should be cautious in voting on this legislation because many medical doctors, who are the best-trained authorities in society concerning the application of diagnostic and other drugs, believe the bill contains inadequate safeguards for the public. And where the public's health is in question, the prudent course would be to follow the doctors' advice.

THE POST'S OPINION

Keep Eye Care Standards High

If it does anything in the field of eye care, the Colorado General Assembly should strengthen further the standards of protection against misuse of dangerous drugs in eye diagnosis, not relax those standards to suit the demands of optometrists.

Colorado optometrists are supporting House Bill 1094 in the current legislative session. If passed, the bill would give optometrists the right to use drugs in diagnostic procedures.

Optometrists are non-medical specialists. They test your eyes for refractive errors and measure their focusing powers. They may provide or prescribe glasses and/or exercise to improve sight.

Now, it would be most convenient for them to use a whole host of drugs to dilate, constrict or anaesthetize the pupil. The procedure would be simplified; the patient might get by a bit cheaper.

The word "might" in that sentence is important, however, because the patient also might have his eyesight impaired by use of those drugs. In some cases, death could result.

At present, the use of drugs is restricted to opthalmologists. Opthalmologists are medical doctors who specialize in defects and diseases of the eye.

While opthalmologists may prescribe glasses or contact lenses, there is considerable interplay in their relationship with optometrists. When serious eye problems are suspected, such as glaucoma, the optometrist sends his patient to the opthalmologist.

There are insufficient numbers of the latter to prescribe glasses for everyone who needs them. Both bodies of expertise thus find work; the optometrist offers a somewhat less expensive option for the person simply in need of glasses.

But under H.B. 1094 the optometrists could extend their service by moving into the use of drugs in diagnosis.

There are several things to keep in mind. One is that drugs don't just wash out of the eye. They go into the tear ducts and are absorbed by the body.

Here are some of the drugs available for eye diagnosis:

• Neosynephrine in 10 per cent solution. This concentration is 80 times stronger than the neosynephrine solution used in nasal drops. It can cause a stroke if improperly used.

• Atropine. One drop of atropine in one per cent solution can keep a patient's pupil dilated for 10 days.

• Phospholine iodide. This is a pupil-constricting agent, used in combination with the dilating drugs. Absorbed in the body, this drug can affect the enzyme system and could—in rare circumstances—cause death if used in combination with anaesthetics.

The anaesthetic drugs are valuable in detecting glaucoma because they help in measuring eyeball pressure. Again, they are potentially dangerous and must be handled by experts.

The bill proposed by the optometrists would require pharmacology training. This is not good enough. The optometrist needs only five years of training, three of which are in professional studies. The opthalmologist spends a minimum of 11 to 12 years in pre-med, med school, internship and residency. Obviously, a medical school offers qualitative advantages as well.

The subject is not one for easy answers. One could not object to a move toward parity if training were parallel and equal. But the public needs total protection where the use of dangerous drugs is involved. The standards should remain high; the only question the assembly should ask in the interests of citizen health is this: are those standards high enough?

Albuquerque, New Mexico
February 7, 1977

Editorials • Comment

ALBUQUERQUE JOURNAL

Optometrists Win; People Lose

The top-heavy 7-2 vote by which the New Mexico Senate Public Affairs Committee gave its do-pass to the optometrists' diagnostic medicine bill is cause for alarm; it is to be hoped it is not indicative of things to come.

It was simply a case of lawmakers without medical training passing on the medical qualifications of others without medical training.

If a summer short course can qualify two thirds of the state's optometrists to administer and understand all the possible ramifications of diagnostic drugs, then it must follow that the American people are supporting a grossly overtrained and overly qualified medical profession. The latter, of course, is a conclusion that no one with health problems is willing to, or can afford to, accept.

Sentinel Star
Orlando, Florida
December 10, 1976

Sentinel Star

"Not for its sake alone — but for the sake of society and good government — the press should be free" — James A. Garfield

Orlando, Florida, Friday, December 10, 1976

Eye To Eye On Eye Drops

WE DON'T always agree with physicians. In fact, in our years of reporting local medical society news there have been notable occasions when we differed sharply with what has been called that group's "closed shop" policies.

Physicians can be secretive when it suits them, occasionally indifferent to the point of callousness, and frequently too immersed in their own small world to make an appreciable contribution to communities that support them in styles ranging from comfortable to luxurious.

But we see eye to eye with the Florida Society of Ophthalmologists which seeks to amend a questionable statute the State Board of Optometry claims permits optometrists to prescribe drugs and eye drops.

Ophthalmologists are doctors of medicine or doctors of osteopathy whose training in pharmacology has given them an intimate knowledge of the risks and benefits of drugs administered to living tissue. They have completed medical training, served a supervised internship and residency, specialized and passed their state boards.

Optometrists have had classroom training only in correcting faulty vision through mechanical procedures. They are qualified to prescribe lenses for certain eye deficiencies, but they lack the pharmacology and training to treat diseased tissue.

Eye drugs can cure or cripple. They can produce high blood pressure, skin rash, fever and convulsions. They can bring on glaucoma, delirium, mental confusion and blindness. They should be prescribed by qualified physicians exclusively.

Florida ophthalmologists are justified in proposing legislation to restrict their use and the fact that Atty. Gen. Robert Shevin has described the present law as "vague" should alert legislators to its danger.

Augusta, Georgia
January [illegible], 1977

Sunday Chronicle-Herald

"The history of liberty is a history of limitations of governmental power, not the increase of it. When we resist, therefore, the concentration of power, we are resisting the processes of death, because concentration of power is what always precedes the destruction of human liberties." — Woodrow Wilson

Kill Senate Bill 20

The Georgia Society of Ophthalmology and the Medical Association of Georgia are acting in the best interest of the people in their opposition to a measure that could, as they claim, "create physicians by legislation rather than education."

The measure is Senate Bill 20. It deserves defeat. It concerns ophthalmologists — who are physicians, specializing in vision problems, with a minimum of 12 years of specialized training — and optometrists, who examine eyes for glasses and receive only six years of training, none of which is in a hospital setting.

Senate Bill 20 would allow the optometrists to use medications without supervision of a physician, such as an ophthalmologist. It is true that in large institutions such as Veterans Hospitals and the Nation's armed forces, optometrists are permitted to use and dispense drugs. Nevertheless, there is always an ophthalmologist nearby who could handle any emergency arising out of the utilization of the drugs.

Experts say that many of the drugs used in the treating of eye disorders affect the autonomic nervous system, and convulsions, lung and heart irregularies as well as accute glaucoma attacks could arise. A basic weakness in the bill, say foes, is the fact that optometrists are not trained in how to counteract adverse effects of drugs.

We think, in light of this, that if an optometrist wants to legally dispense medications a course of action available to him is one an ophthalmologist already has taken: Enroll in medical school and undergo years of specialized training.

The State

Columbia, S. C.
February 12, 1977

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The Eye Of The Storm

A SEEMINGLY innocuous bill pending before the House Medical Affairs Committee has South Carolina's medical profession in a state of apprehension — and optometrists in a state of anticipation.

At issue is a proposal to amend the existing statute relating to optometrists so as to permit their use of "topical ocular diagnostic pharmaceutical agents" in their examination of eyes. They contend, rather plausibly, that their diagnoses of optical conditions can be helped through the use of certain chemical agents in specific cases.

This contention is meeting vigorous opposition from *physicians* who specialize in the diagnosis, care, and treatment of diseases and other abnormal conditions of the eye. These ophthalmologists, to give them their official medical identification, fear that the general public will suffer if optometrists (who are not trained and licensed as doctors of medicine) are authorized to employ potentially harmful drugs in the examining of eyes.

Both the ophthalmologists and the optometrists readily admit that the two groups play essential, although separate, roles in eye care. Under ordinary circumstances, optometrists who come across indications of eye disease will refer their patients to an ophthalmologist. Conversely, ophthalmologists may refer patients to optometrists when visual needs involve only the prescribing and fitting of lenses, whether conventional or contact.

But they part company with respect to the use of drugs by optometrists. Furthermore, the concern over possible ill effects extends not just to the ophthalmologists but to the entire medical profession, as evidenced by the S.C. Medical Association's recent adoption of a resolution urging the legislature, "for the protection of the people of South Carolina," *not* to allow optometrists to assume the medical functions inherent in the use of drugs.

The State agrees with the physicians of South Carolina in this matter. Without in the least derogating the very useful services rendered by optometrists, we nonetheless feel that medical treatment should be limited to those practitioners who have been medically trained. Eyesight is too precious — and too perishable — to be subjected to ministrations which, however well intentioned, might result in permanent loss or impairment of vision.

Both the ophthalmologists and the optometrists have their hands full in meeting the current demand for eye care. Let us hope they can continue working within their respective fields of preparation and competency as currently defined by law and custom.

Tallahassee Democrat
Tallahassee, Florida
February 7, 1976

Tallahassee Democrat

Malcolm B. Johnson, Editor
William M. Phillips, Managing Editor
W. H. Harwell Jr., General Manager

Published Daily at 277 N. Magnolia Dr., Tallahassee, Florida 32302

4—Sat., Feb. 7, 1976

As our editors see it

Safeguards are needed in eye care business

There is some professional dissent pervading the eye care business.

Dictionary definitions list an optometrist as a practitioner who measures vision and corrects visual defects without the use of drugs or surgery. Florida law, however, puts no prohibition on the profession of optometry. The law defines optometric services "to be the diagnosis of the human eye and its appendages and...determining the refractive powers of the human eyes, or any visual, muscular, neurological or anatomic anomalies ... and the employment of lenses, prisms... and any other means or methods for the correction, remedy or relief of any insufficiencies or abnormal conditions of the human eyes."

This is pretty powerful stuff. Optometry which is a measuring science now sounds like a medical science.

Ophthamologists as medical doctors specializing in the treatment of disease or defects in the eye are understandably concerned over the license given the optometrists by Florida law. They maintain that to "diagnose" the human eye and employ "any means" to correct abnormal conditions is not within the realm of optometry.

They're right. Optometrists serve a need in the community for the measuring of visual inaccuracies and the prescription of corrective glasses. Their training does not include enough pharmacology to safely prescribe drugs, nor enough anatomy to accurately diagnose disease.

Most optometrists are practicing within the logical limits of their profession. They do not attempt to treat diseases of the eye nor prescribe drugs for improvement of eye conditions.

But the potential for jeopardizing health standards is there. The law should be made more specific.

Thus far the legislators have declared that the "professions" should fight it out by themselves. Legislators have also claimed that this isn't their battle, that legislating a more precise definition does not fall within their jurisdiction.

What they neglect to mention is that the state has police powers that may be invoked to provide for the health and safety of its inhabitants. Defining the limits to the profession of optometry will not reduce the effectiveness of optometrists. It will safeguard the profession from the potentially irresponsible actions of a few and promote accurate and effective health care of the many.

Tallahassee, Florida
August 5, 1976

Define professional limits

By COLLINS CONNER
Democrat Staff Writer

When you're sick, do you go to a doctor? More to the point, when you go to a doctor, do you go to a doctor?

The health care field is growing by leaps and bounds. Most of us are confused and disoriented enough trying to weave our way through the physician specialties. What adds to the confusion are other categories of health providers that seem to straddle the fence between medical doctors and other health professions.

Like podiatrists, who aren't MDs but do provide physician services for problems with the feet. Or naturopaths, or osteopaths or chiropractors. None of these are medical doctors, but all provide health care.

They are all allowed to use drugs in their courses of treatment. And under the list of which professionals are allowed to dispense and prescribe their drugs through the services of a pharmacist, they are all included as "practitioners."

* * *

WHETHER OR not the public understands the intricate limits to the practices of these health providers, the providers themselves do. And so too do other professionals whose duties intermingle with these providers.

That isn't the case with optometrists. Not only is the public sometimes confused about the limits to optometry, but other professionals, such as the pharmacists, and even the optometrists themselves interpret those limits in varying ways.

According to the state statute defining an "optometrist," he is able to use any means to examine, diagnose and treat impairments to or disease of the eye.

The optometrists asked the Florida Attorney General's office if that statute gave them the right to use drugs in their diagnosis and treatment.

CONNER
. . . Seeking drug use

And the Attorney General's office replied, "well, the statute doesn't exclude that possibility."

Enter confusion.

* * *

A SOUTH Florida druggist had a prescription telephoned to his store by an optometrist. The druggist informed the optometrist that under the statute governing pharmacists he was not allowed to fill that prescription.

The optometrist said all that had changed. After all, the Attorney General said it wasn't forbidden for the optometrists to prescribe drugs.

So the pharmacist filled the prescription. And in doing so, according to the Florida Board of Pharmacy, the druggist put himself in a precarious position.

Stuck in the middle, the pharmacist's board must make a compromise between a statute that says optometrists can prescribe drugs and a statute that says pharmacists can't fill their prescriptions.

* * *

THE PHARMACISTS are advised to supply the optometrist with medicines he wishes to use for diagnostic purposes, but not to fill prescriptions for medicines needed for treatment of eye problems.

It's as though the druggists must say, "I can give him medicine in general which he may use as he pleases, but if I fill his patient's prescriptions, it will indicate that I am cooperating in the treatment of a patient which will reflect on my liability."

The debate, for the most part, is way past the comprehension and interest of the average citizen. That's the whole point in having the Legislature define professional limits — to safeguard the interests of an unknowing population.

In this case, the Legislature hasn't considered the safety of the public. It hasn't even considered the risks to the professionals involved.

From stupid statutes mighty snafus grow.

Ruidoso News
Ruidoso, N. M.
December 9, 1976

Stuph & Junk

. . . by

Cale Dickey

YOUR EYES AT STAKE

New Mexico's opthalmologists are rankled at optometrists . . . 'cause optometrists are pushing for rights to administer drugs in the treatment of eye disorders . . . which is roughly akin to taking a horse suffering from colic to a farrier for treatment.

Simply stated an optometrist is trained to examine your eyes for defects, to prescribe corrective lenses and to suggest exercise therapy.

An opthalmologist is a medical doctor . . . that's M.D. . . . who took additional schooling to specialize in eye disorders and their treatment . . . and there are the delicate eye operations performed by opthalmologists . . . and while a farrier might correct a limp in a horse, an optometrist isn't licensed to practice medicine, because optometrists don't receive a degree as a medical doctor with their degree in optometry that lets them refer to themselves as "doctor".

A good optometrist is a credit to himself his community and his clientele . . . he does his thing by fitting you with glasses so that you can see well . . . for this service he receives an adequate stipend . . . he's happy . . . and you have good fitting glasses . . . but because a good automobile mechanic can keep your car running smoothly doesn't mean he can fix your clock. And even the best glass eye doesn't do a thing for your peripheral vision.

One Man's Opinion

by

William C. Crane

Eyes Are Important

An amendment to Code Section 84-1101 is being proposed in the General Assembly. This amendment pertains to you and your eyes, and should be of paramount importance to you the public.

Basically it would allow an optometrist to use pharmaceutical agents for diagnostic purposes if the optometrist has received pharmacological training and accreditation from an accredited institution of higher learning and certification by the Georgia State Board of Examiners in Optometry.

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IT WOULD seem that as written the bill is too vague as to requirements and drugs allowed.

Remember your eyes are your most valuable asset other than your life.

How wonderful to see a lilac bud, a sunny spring morning, a bouquet blooming in the cradle of a beautiful girl running down the street, a group of boys playing soccer. The rainbow after the rain, the mist that walks softly and takes the cream of sunrise or sunset. Perhaps one may see the star or heaven that the eyes convey to your brain.

0

THIS WRITER believes in the concept of an optometrist for prescription glasses and an opthalmologist for eye trouble involving the need of drugs or surgery. For your information the following description and training of each profession is printed for your guidance and after reading this you believe that further thought should be given to passage of this bill, then call your senators and representatives and voice your thoughts.

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"AN OPHTHALMOLOGIST is a primary care physician qualified to provide comprehensive diagnostic eye examinations for both systemic and ocular diseases and the initiation of medical treatment including the prescribing of indicated medication and lenses. He is educated, trained and licensed as a Doctor of Medicine or Osteopathy and is the portal of entry for the public into medical care systems. His education usually includes four years of college, plus four years of medical school, one year of internship and 3-4 years of ophthalmology residency, for a total of 12-13 years of basic training.

0

"AN OPTOMETRIST is a limited practitioner whose formal education (two years pre-optometry college classroom required study, plus a four year college curriculum in optometry) limits him to testing for vision problems unrelated to disease. Optometrists test depth and color perception and the ability to focus and coordinate the eyes. When necessary, they prescribe and fit lenses. Some are taking additional classroom training in an effort to expand their services into the practice of medicine. Ocular pharmacologists who are M.D.'s testify that classroom training is inadequate and that the trend is a public health hazard.

Views expressed in our columns do not necessarily reflect the editorial opinion of the Ruidoso News.

NEW MEXICAN Opinion

Santa Fe, N.M., Wed., Feb. 2, 1977

Defeat eye bill

The Senate Public Affairs Committee is scheduled to hear a controversial bill proposed by the state's optometrists which would establish a dangerous precedent in praviding eye care.

The measure, Senate Bill 123 introduced by State Sen. Ray Leger, a Las Vegas Democrat, would permit the state's optometrists to prescribe eye treatment drugs.

The bill is being advanced as a consumer oriented proposal which would reduce the cost of care and make more care available throughout the state. National optometrists organizations have launched a nation-wide push for such measures which have been successful in some states.

The state's opthalmologists - licensed medical doctors - bitterly oppose the bill. They argue that an optometrist, who is not a medical school graduate and who does not have medical training, shouldn't not be permitted to prescribe drugs - in some cases dangerous drugs which can have harmful side effects.

Optometrists counter by saying that they have already received or will receive more than 70 hours of training from optometry schools in the use of these drugs.

In our opinion, it is impossible to compare 70 hours of training from an optomery school to the four years of medical school, one year of intership, and three to four years of opthalmology residency which each opthalmologist must undergo before he can be licensed.

Permitting optometrists to prescribe drugs would build in a false sense of security for many patients which may cause them to ignore or overlook serious problems.

In literature it has been said that the eyes are the windows to the soul. In medicine the eyes are an important window and indicator to how the rest of the body is functioning.

If there is something wrong with a patient's eyes that requires the use prescription medicines, it should be a doctor looking into those eyes, not an optometrist.

The legislature has the responsibility to protect the public's health and safety by defeating this measure.

Santa Fe, New Mexico
February 7, 1977

NEW MEXICAN Opinion

Santa Fe, N.M., Mon., Feb. 7, 1977

Limit eye drugs

Should the New Mexico Legislature enact a vague law which permits optometrists to use certain drugs for diagnostic purposes even though some of those drugs can cause harmful side reactions?

That is the baaasic problem facing the House of Representatives now that the Senate has passed a controversial bill backed by the state's optometrists.

Last week a New Mexican editorial opposed this bill on the grounds that optometrists should not be allowed to treat eye patients with prescription drugs.

This brought out a flock of optometrists protesting that they were not seeking the use of prescription drugs to treat eyes, but were merely asking for the right to use a limited number of drugs for diagnoses.

The version of the bill which passed the Senate last week, was amended to limit optometrists to using these drugs for diagnostic work. Even now there is still debate between optometrists and opthalmologists and their lawyers over what the bill does nor does not permit or the original bill did or did not permit.

Optometrists say they need to use these drugs, for which they have received special training, to dialate eyes and perform more accurate, complete eye examinatmions. There are 17 states which permit optometrists to use these diagnostic drugs. New Mexico's optometrists contend the state's prohibition imposes a financial hardship on state residents seeking adequate eye care.

Opthalmologists counter that the optometrists refuse to be specific on exactly what type of drugs they want to use. Even optometrists admit that some of the diagnostic drugs involved can cause harmful side reactions in some people, although both groups say reactions are rare.

Opthalmologists, who are trained medical doctors, contend that optometrists, who do not have medical training, are not fully prepared to handle these reactions including possible heart and respiratory problems and convulsions.

There is no specific limitations on the drugs which can be used, although optometrists say they do not intend to use all drugs which fall under the category "ocular diagnostic pharmaceutical agents." The final Senate version of this bill is too vague. It should be as specific as possible about what drugs and under what conditions optometrists should be permitted to use.

We repeat our original concern, that some of these drugs can be dangerous, if used on the wrong patient, in the wrong concentrations and under the wrong circumstances. To protect the public's health the legislature has a responsibility to be as specific as possible.

Evening Independent
St. Petersburg, Florida
June 15, 1976

independent thinking

Efficient?

The crack management team that recently gave the City of St. Petersburg such a fine rating for administra-

EVENING INDEPENDENT

Opinion

16-A Tuesday, June 15, 1976

We hope [illegible] nd that of every other [illegible] ing privileges - - got the [illegible] message.

Clear Case

Their position may not be visionary, but Florida ophthalmologists have made it clear: "Diagnosis" of medical eye problems and use of "any means" of treatment are properly the duties of well-trained medical men — not just optometrists.

And most optometrists don't dispute that.

But a few apparently are prescribing drugs for patient eye problems, when chiefly optometrists are to measure vision and correct defects without drugs or surgery.

The Florida law, it turns out, allows optometrists to use "any means" in "diagnosis." Obviously, a further clarification of that statute is in order.

At least, that's how we see it.

Orlando Sentinel Star
Orlando, Florida
June 19, 1976

Sentinel Star
Orlando, Florida

Florida

14A
Sat. June 19
1976

EDITORIAL

Limit Prescription Drug Use

THE FLORIDA Society of Ophthalmology is petitioning the legislature to prohibit optometrists from prescribing drugs in its treatment of eye ailments. Favorable legislative action would nullify a recent decision by the Florida State Board of Optometry allowing use of drugs for diagnosis and treatment of disease by optometrists.

The opthalmologists' petition should receive legislative priority.

We have nothing against the optometric practice of prescribing glasses to correct vision if the affliction is not caused by eye disease. Indeed, one editor doesn't mind admitting she chooses her own reading glasses at McCrory's spectacle counter.

But permanently impaired vision and even blindness can result from drugs prescribed by an unqualified practitioner, and optometrists, whose training is limited to fitting corrective lenses by mechanical means, do not qualify as physicians.

Ophthalmologists, on the other hand, are medical school graduates who have served internships and residencies and have specialized in the treatment of eye disease.

In the interest of public health, prescription drugs should be dispensed at the discretion of physicians only.

ALBUQUERQUE JOURNAL

Robert A. Brown, Senior Editor Gerald J. Crawford, Editor

Wednesday, November 24, 1976

Fences Work Two Ways

The pending legislative confrontation between the medical doctors in the New Mexico Medical Society and the optometrist-members of the New Mexico Optometrical Ass[illegible] the earmarks of a showdown between [illegible]essional closed-shop monopolies.

B[illegible]e we're inclined to side with the [illegible]ety and its members, primarily because health-and-safety risk involved in placing [illegible]nostic drugs in the hands of those not trained in the care of the entire human body and all its parts.

But poetic justice suggests that the optometrists, in their efforts to trespass on the precincts of another privileged sanctuary, should be governed by the same rules with which they have protected their own. No long memory is required to bring back the days when the optometrists enjoyed free rein in New Mexico's legislative halls, even to the point of infiltrating the legislature and, for brief spans, virtually controlling it.

In those days the optometrists were able to impose rules making it a crime for a pharmacist, a jeweler or any other non-optometrist to even look at a pair of eyeglasses. Worse still, they succeeded in imposing and enforcing a muzzle on the free press, prohibiting newspapers and broadcasters in the state's border cities from publishing price-oriented advertisements from optometrists in adjoining states.

The optometrists have worked hard at perfecting the pattern of the professional sanctuary. It would seem only equitable now that they should live within that pattern.

JIM BISHOP, NATIONALLY SYNDICATED COLUMNIST, APPEARING IN OVER 200 NEWSPAPERS, TOTAL CIRCULATION EXCEEDS 20 MILLION

Albuquerque Journal
Albuquerque, New Mexico
November 24, 1976

Jim Bishop

Our Eyes: Only Two For Each Customer

Glaucoma, whether chronic or acute, is treatable. It cannot be cured. The world of medicine has reached a stage where it can stop the threat of blindness in its tracks. It cannot restore sight; merely stop it at whatever level it has attained when treatment begins.

MOST OF US are fairly faithful in having an annual examination. Our brains are imprisoned in fragile structures called the body. Our doctors examine the parts and give us counsel about weight, blood pressure, heart, lungs, kidney function, many things.

He merely peeks into each eye to see if the blood vessels are engorged. He gives it as much attention as his peek into your ears.

An optometrist can prescribe proper glasses. An optician will grind them and fit them. Only the ophthalmologist is qualified to look inside your eyes, study the optic nerves and tell you that your windows on the world are in reasonably good health.

Eyes are rationed. Only two to a customer.

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

February 9, 1978

Representative Charlie Parr
Chairman
Health, Education and Social
Services Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Parr:

This third installment will be devoted to optometric education in the United States and also on the quality of care that the citizen of Alaska might expect from optometrists practicing in Alaska.

OPTOMETRIC EDUCATION

A study entitled, "New Englanders, Their Eyes, And Those Who Profess To Care For Them", by Samuel E. Wallace, PhD (sociology), University of Tennessee, was sponsored by New England Council of Optometrists and funded by the National Institutes of Health (NIH). This study was completed in 1974 and was intended to provide justification for a new optometric college in New England. The report deals with a single school, the "MCO" (Massachusetts College of Optometry), now called New England College of Optometry, which evolved from a private school begun in 1896. The degree O.D. was first conferred in 1951. Today (1970) there are 209 students in four classes. Entrance requirements are a minimum of two years undergraduate college work with at least a "C" average, then four years are required to earn the O.D. degree.

Dr. Wallace evaluated the quality of the students and noted the following (Quotes are direct quotations from the text): 1) All students had two years of undergraduate training with most earning a B.A. or B.S. degree. 2) Only nine of the 209 students had an entrance grade average of B or better; therefore, 200 students were C students (only 4% of the students at this college, then, had a B or better average. 3) Most of the students took premedical or predental undergraduate courses but "had to give up their original aspirations because of their poor grades." 4) The professors "complained that the students refused to do any assigned homework and are immature in their study habits, that they have to be spoon fed." The students "refused to take any initiative in the learning process" and "will learn only what is specifically presented to them in class."

Wallace, too, reviewed the faculty and noted the following: 1) Thirty full-time and 14 part-time faculty members hold degrees varying from O.D. to PhD and M.D. Most, 19, holding an optometric degree alone is their highest academic degree. 2) Several teachers proudly said that some of their courses

1919 LATHROP STREET P.O. 1248, FAIRBANKS, ALASKA 99707, PHONE 456-7767

are "almost as good as the courses given in medical schools." 3) "Faculty members must share and unconsciously reinforce the anti-intellectualism and the inferiority feelings" of the students.

Regarding the quality of courses, Wallace noted: 1) Several of the required courses "repeat knowledge that the students should already have when he arrives. 2) "Many of the courses are conducted basically on the level of a high school or freshman college introductory biology course." 3) The classes are "almost all lectures where the professors simply repeat what's in the text." 4) In a typical pathology course, the practical advice given by the professor to the student, if he recognizes the disease, is to "refer it out." 5) "The classes are characterized by a lot of whispering, sleeping, and general inattention on the part of the students." 6) The optometry students "tend, as a group, to be unimaginative and show a remarkable lack of initiative."

Wallace concludes that the optometric student's education "seems almost as if it is make-work to take up the four years that the Optometric Society has decided should be devoted to the study of optometry for the sole purpose of achieving a social status comparable to that of medicine."

THE CLINICAL TRAINING OF AN OPTOMETRIST

Wallace investigated the optometry students exposure to patients and their problems. This is the nonlecture portion of their training and takes place in the optometric clinic. It is during this period of time that the student gains practical experience in both "visual examination" and, hopefully, some experience in the detection of pathology.

The following points of interest were made by Dr. Wallace: 1) One of the primary problems of the clinics is "a lack of patients." Students are "fortunate to fit a dozen pairs of contact lenses, shared between two students." Students "carry out maybe 25 or 30 complete visual examinations in the course of an entire academic year." 2) The limited time an ophthalmologist spends on call in these clinics indicates "the very few cases of pathology which the optometric clinic sees." 3) "In general, 90% of the patients are between the ages of 15 and 30 years." (It should be noted that this age group has a very low incidence of eye diseases.) 4) The optometry students provide "routine eye examinations rather than investigating pathology." 5) At another optometric clinic, "cases of pathology are so few and far between at the clinic that he (the ophthalmologist) has very little to do." 6)When pathology was suspected, the work-up was improper and the follow-up not documented. 7) Regarding the use of tonometry (measuring the eye pressure for purposes of detecting glaucoma) optometry students have "very little confidence in the tonometry readings." The findings, with respect to readings obtained by the optometry students, "seem to be quite unstable" and interpreted by Wallace as being "worthless."

Even if we ignore the supposed exposure and training the optometry students obtain in detecting pathology, Wallace notes that in the area of visual examinations, "The clinic staff did prescribe spectacles more often than was absolutely necessary." (It would seem that this certainly would increase the cost of health care to the consumer.)

THE PRACTICING OPTOMETRIST

Because of the lower educational requirements, optometrists begin practice generally at a lower age than most other professionals. The average optometrist has been in practice 18 years and, therefore, has the educational standards of 1951. Wallace notes that 80% of practicing optometrists do not have a bachelors degree and 33% do not even have an O.D. degree. Within that 33% group, some have had no formal training. (The average age of the practicing optometrist in Alaska today is 40. On the average, they have been in practice 15 years. The average graduate finished optometry school in 1962.)

Wallace observed the efficiency and competency of an ophthalmic assistant who had only two years of training and contrasted him with a recent graduate of MCO. He noted that only "a few minutes of observation was needed to conclude that the ophthalmic assistant was far superior in all respects."

Wallace continues, recognizing the "incompetent optometrists found among recent graduates, as well as among older ones" in observing the "low and inadequate academic standards at the MCO" coupled with the "poor quality of optometric performance and pathology detection," he suggests "the average level of patient care in the future will deteriorate."

Wallace notes that organized optometry is attempting to establish 10 to 20 new colleges of optometry and that "at a time when we need more ophthalmologists, we are getting more and more optometrists." The current oversupply of optometrists increases "commercial competition", gives "them so little to do that they do even less," contributes to lowering "the income of all practitioners and gives them no choice but to sell spectacles in order to survive."

"Quality is optometry's most pressing need, not quantity." Recognizing the quality of optometry students, Wallace reports that half of the current students "probably should be dismissed before they have a chance to go in to practice."

Wallace suggests that increased communication between ophthalmologists and optometrists would indicate to many optometrists "just how inadequate their examinations now are."

Alluding to the optometric-ophthalmologic conflict, Wallace notes that "optometrists have numbers on their side while ophthalmologists have everything else." "Ophthalmologists should begin now to assert the changes which they too know should be made in optometry."

In summary, Wallace states that with the present underutilization of optometrists, "at least 10,000 vacancies now exist every week in optometrists' appointment schedules" and that no new optometrists are needed in New England for at least three years. In contrast, there is a serious shortage of ophthalmologists and projected growth of ophthalmologic manpower falls far below that required just to maintain the present level of "overutilization."

ON OPTOMETRIC "FACT SHEETS"

You will be seeing so called "optometric fact sheets" and will be hearing optometric testimony as to their capabilities in pharmacology, diagnosis, and pathol-

ogy after approximately 3,500 hours of lectures in clinics and optometry school. According to the Random House dictionary of the English language, pharmacology is the science dealing with the preparation, uses, and effects of drugs; diagnosis is the process of determining by medical examination, the nature and circumstances of a diseased condition; and pathology is the science or study of the origin, nature, and course of diseases. These are all scientific studies associated with general medical studies, and no optometry school is equipped to prepare medical students.

Optometrists will incorrectly imply that their courses in pharmacology compare favorably with those of medical and dental students, but they won't tell you that medical students go far beyond the textbook courses in pharmacology and spend many more hours in courses in therapeutics. This is the application of pharmacologic knowledge to patients with disease and the recognition and management of local and bodily drug reactions. Even pharmacists have never considered themselves adequately trained to evaluate drug dosage or administer drugs. They won't tell you that the average ophthalmologist, in addition to medical school and an internship, has, in a three year residency, spent more than twice the number of hours required in the entire optometric curriculum, devoted solely to ophthalmology lectures and constant clinical exposure to the diagnosis and treatment of disease and surgical problems of the eye.

The fact sheets won't tell you that optometric clinical exposure is almost totally in the realm of examining eyes for glasses and so called "visual training" and that this exposure is very scant in numbers of patient contacts. In optometry school, there is no hospital training whatsoever, nor are optometry students exposed to sick eyes or sick patients.

The Optometric Manpower Resources Projects, published by the United States Department of Health, Education and Welfare in 1976, shows that the median age for active optometrists in this country is 49.4 years; that only 25% of active optometrists in 1973 were under 40 years of age and that 48% were over 50 years of age. This means that about 75% of optometrists practicing today have had little or no exposure, even at the textbook level, to pharmacology and clinical disease diagnosis. Are these the people we wish to entrust with the use of potentially dangerous drugs. Bill 664 would allow this if it were enacted.

Today there are no M.D.'s teaching at two of the nations 13 optometry schools and no full time M.D. professors in any optometry school, according to a catalog study by the Physicians Education Network in December of 1977. In truth, a new accredited optometric school called Ferris State College of Optometry, has no M.D. on their staff in either a full or part-time capacity and only one O.D. If this is an accredited school with the lack of qualified instruction, even at the optometric level, this certainly qualifies as a "diploma mill" in all senses of the connotation. If then this is a diploma mill and is an accredited school of optometry, one must question the validity of the accreditation methods for all of the schools of optometry throughout the United States.

Optometrists also won't tell you that many of them in practice today have only the degree of bachelor of science in physical optics. The O.D. degree originated in independent optometric institutes and is a relatively recent degree in many optometry schools. They won't tell you that under the statutes, optometry is not considered to be one of the "healing arts." They almost certainly won't

tell you that a recent study conducted by the American Board of Ophthalmology and instigated by the federal General Accounting Office, shows not only that we have too few ophthalmologists in this country, but that the number of optometrists presently being graduated is "clearly excessive when compared to the amount of work available to them," and therein lies a key factor in the rapidly developing political efforts of optometry to expand thier capabilities by legislative acts; they need to make work for themselves.

ON OPTOMETRISTS PRACTICING IN THE STATE OF ALASKA

According to figures obtained in February of 1978 from the Department of Commerce, Division of Licensing, there are 38 licensed optometrists in Alaska. Their educational background is as follows:

24 attended Pacific University College of Optometry (1951 to 1976)
5 attended Illinois College of Optometry (ICO)
4 from 1948 to 1960 and 1 graduated in 1977
3 attended Southern College of Optometry
2 attended the University of Houston College of Optometry
1 attended Southern California College of Optometry
1 attended Los Angeles College of Optometry (No longer listed as an optometric school)
1 attended Northern Illinois College of Optometry (No longer listed as an optometric school)
In one case, it is unknown to the Department of Commerce where he went to school.

The following is a summary of pharmacology training at these various institutions.

Pacific College of Optometry has NO M.D., PhD, or anyone with a masters or bachelors degree in pharmacology teaching at that institution.

Illinois College of Optometry, prior to 1960, had NO M.D., PhD, or anyone with a masters or bachelors degree in pharmacology teaching. The one graduate of 1977 may have been taught by one professor in the category of PhD or masters or bachelors degree.

Southern College of Optometry has NO M.D., PhD, or anyone with a masters or bachelors degree in pharmacology teaching at that institution.

University of Houston College of Optometry has NO M.D., PhD, or anyone with a masters or bachelors degree in pharmacology teaching at that institution.

Southern California College of Optometry has NO M.D. teaching in pharmacology; has two instructors listed as either a PhD or masters or bachelors degree.

It follows that at least from all the available evidence, the maximum number of optometrists in the state that had any pharmacology training from any qualified instructor at all, is two; one from the Illinois College of Optometry who graduated in 1977 and the one graduate of Southern California College of Optometry. It appears that the maximum number of optometrists in the state that had any pharmacology training from any M.D. or M.D./PhD in pharmacology is zero.

The maximum number of optometrists in the state that had any instruction at all from any full-time M.D. on the staff of the school is zero.

The maximum number of M.D.'s in even a part-time capacity on the staff of any school attended by 37 of the 38 optometrists in Alaska, is two. From a survey of the Blue Book of Optometry which was last issued in 1976, it appears that the maximum number of members of the State Board of Optometry that even have a bachelors degree from any school is two of the six board members that are listed. It would seem reasonable that there would be an ophthalmologist either in the teaching or in the clinical aspect of optometric education, but it appears from the available evidence, that the maximum number of optometrists currently practicing in Alaska that had any full or part-time instruction, either by lecture or in the clinical setting by an ophthalmologist, is zero.

Please find enclosed a study compiled by the Educational Catalog Study Committee of the South Carolina Ophthalmologic Society in December of 1977, entitled, "Who Teaches Optometrists Medicine." The data that I've previously described can be substantiated from this chart, as well as other quite interesting points including faculty/student ratio as compares with three southern medical schools. The Comments section is particularly important when it shows what the position of the M.D.'s on the staff of any of these schools participated in. It should be noted that I completed by ophthalmology residency in 1975 at the Medical University of South Carolina College of Medicine.

Sincerely,

Sam A. McConkey, M.D.

SAM:ls

cc: Representatives: M.F. Beirne
Don Bennett
Fred E. Brown
Thelma Buchholdt
C.V. Chatterton
Samuel R. Cotten
Steve Cowper
Alfred C. Nakak
Al Ose
Randy Phillips
Sarah J. Smith
Leslie E. Swanson

WHO TEACHES OPTOMETRISTS MEDICINE?

CURRENT SCHOOL CATALOG STUDY COMPARES FACULTIES AT SEVERAL TYPICAL MEDICAL AND DENTAL SCHOOLS WITH FACULTIES AT *ALL* OPTOMETRY SCHOOLS IN THE U.S.

MEDICAL COLLEGES	Total # of Students	Total # of Faculty	Faculty/ Student Ratio	Total # of M.D. Professors (Full or Part Time)	Full Time Clinical* Teaching M.D. Specialists	OPHTHALMOLOGISTS (M.D. Eye Specialists)			PHARMACOLOGY DEPARTMENT		O.D.s	O.D./Ph.D.	Other Ph.D., M.S. or B.S.	COMMENTS
						Full Time	Part Time	M.D. Residents	M.D.s - M.D./Ph.D.	Ph.D., M.S. or B.S.				
Medical University of South Carolina College of Medicine	660	1,281	1.9	651	201	3	23	9**	6	25	0	0	630	* *CLINICAL* — Refers to working with patients in hospitals or out-patient clinics. ** Ophthalmology Residents spend 3 months during their 3-year residency in an intense basic science course taught by nationally prominent Ophthalmologists at Colby College, Waterville, Maine.
Duke University College of Medicine	489	1,102	2.3	632	483	8	10	16	2	7	0	0	470	
Medical College of Georgia	720	944	1.3	495	246	3	10	8**	2	10	0	0	449	
DENTAL COLLEGES														
Medical University of South Carolina College of Dentistry	160	312	2.0	74	0	0	0	0	6	25	0	0	123	84 D.D.S. teaching mostly Clinical 9 are D.D.S., Ph.D.
Medical College of Virginia College of Dentistry	439	353	.80	33	0	0	0	0	8	20	0	0	127	126 D.D.S. teaching mostly Clinical 20 are D.D.S., Ph.D.
COLLEGES OF OPTOMETRY														
Southern College of Optometry	604	49	.08	2 PART TIME	0	0	0	0	0	0	37	2	7	The 2 part time M.D.s are classroom lecturers in Pathology.
Illinois College of Optometry	600	56	.09	1 PART TIME	0	0	0	0	0	1	47	1	6	The only M.D. is a part time Lecturer in Pathology.
Pennsylvania College of Optometry	552	89	.16	5 PART TIME	0	0	2	0	0	1	55	4	17	
Southern California College of Optometry	384	83	.22	5 PART TIME	0	0	2	0	0	2	65	5	8	
Pacific University College of Optometry	340	23	.07	1 PART TIME	0	0	0	0	0	0	12	1	8	The only M.D. is a Professor of Physics and Optics, part time.
New England College of Optometry	332	66	.20	4 PART TIME	0	0	2	0	0	1	52	5	4	
University of Houston College of Optometry	284	64	.23	2 PART TIME	0	0	0	0	0	0	47	4	7	The 2 part time M.D.s are Classroom Lecturers in Pathology.
Indiana University College of Optometry	276	38	.14	0	0	0	0	0	0	0	21	4	11	No M.D.s on Staff.
Ohio State College of Optometry	228	63	.28	1 PART TIME	0	0	1	0	0	0	46	4	12	The only M.D. is part time. He lives 100 miles away in Cincinnati.
University of Alabama College of Optometry	160	48	.30	3 PART TIME	0	0	0	0	1	0	22	9	12	All M.D.s are part time classroom lecturers. One M.D./Ph.D. lectures in Pharmacology.
State University of New York College of Optometry	160	122	.76	9 PART TIME	0	0	6	0	0	0	87	3	22	
University of California Berkeley College of Optometry	256	77	.30	9 PART TIME	0	0	6	0	0	0	43	11	12	One part time M.D. teaches in Public Health, one in Engineering and one in Physiological Optics
Ferris State College of Optometry	100	31	.31	0 PART TIME	0	0	0	0	0	3	1	0	29	All but 2 of these 29 also teach in the Biology and Chemistry departments of the Undergraduate College.

STUDY THE CHART : CAN MEDICAL EYE CARE BE ENTRUSTED TO OPTOMETRISTS WHEN THIS STUDY PROVES THAT THERE ARE *NO* FULL-TIME M.D. INSTRUCTORS IN ANY OPTOMETRY SCHOOL ANYWHERE?

Study Compiled for PEN Inc. by the EDUCATIONAL CATALOG STUDY COMMITTEE OF THE SOUTH CAROLINA OPHTHALMOLOGICAL SOCIETY

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

February 10, 1978

Representative Charlie Parr
Chairman
Health, Education and Social
Services Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Parr:

It is appropriate that in this installment, the medical community's views on the use of medications and the potential hazards of same be discussed.

DRUGS AND DRUG CARE

Optometrists claim that the drops they propose to use are necessary and innocuous and the health care system will thereby be expanded. This is a spurious claim. The health care system will not be expanded and the rural areas will not be served by allowing nonmedical people to dilate pupils to look for disease which they are not trained to diagnose. Death or serious disability can be caused by an untrained person overlooking a tumor, early glaucoma, or a detached retina in a nonmedical attempt at "diagnosis." Diagnosis is (by definition) the determination of the presence or absence of disease and, if present, a determination of its nature. Optometrists are not able to make this medical determination because it is not within the scope of their training. By contrast, legally limiting the profession of optometry to the area of activity in which they are trained to function, will not reduce their effectiveness. It will help safeguard their whole profession from the potentially irresponsible action of a few and will promote the health of the public.

The use of cycloplegics, mydriatics, topical anesthetics, and miotics by optometrists nonmedically trained, as called for in Bill 664, could be extremely dangerous. These drugs cover an extremely broad range of action. Some can produce serious systemic side effects or surgical emergencies which require immediate recognition and treatment. Also, since these drugs are often used for treatment, rather than as diagnostic aids, in the hands of the nonphysician, they could be subject to abuse. Cycloplegics paralyze the muscle within the eye which controls focusing of the lens; mydriatics dilate or enlarge the pupil of the eye; topical anesthetics are drops which numb the lining membrane of the lids and outer eyeball; miotics make the pupil smaller and are used in the treatment of glaucoma. In passing, it should be stated that at no place in the drug formulary does the Food and Drug Administration suggest that miotics are to be used for any diagnostic purposes. This is a quite obvious additional reason why Bill 664 is a sham for therapeutic use of drugs.

1919 LATHROP STREET, P.O. 1248, FAIRBANKS, ALASKA 99707, PHONE 456-7767

ON THE DANGER OF DILATING DROPS

In some instances, dilating drops can cause acute glaucoma which may then be a surgical emergency or at least require intensive medical treatment. An optometric "fact sheet" just being circulated, widely claims that this does not occur. This is just not true. Any ophthalmologist in active practice has seen drop induced acute glaucoma. In susceptible individuals, cycloplegics and mydriatics can produce a wide variety of complications, can aggravate existing heart problems, or may even produce toxic mental disorders or coma. Children are particularly susceptible to these eye-drops and often become cranky, sleepy, or even delirious while waiting in the office. Action to remedy this must be immediately available and can't wait on referral to medical help elsewhere. I always have on hand emergency medical equipment, such as oxygen, airways, and oral and injectable drugs to handle unforeseen emergencies. No optometrist is capable of this medical response. There is no justification for optometrists to want to use mydriatics or cycloplegics. Until very recently, they opposed ophthalmologists use of cycloplegics in refraction of the eyes and labeled it in one of their little bulletins "a cruel test" that produces "an abnormal state for examining the eye for glasses." If they want these drugs to better look into the interior of the eyes, it is truly a sham because most optometrists have not been trained in peripheral retinal examinations. Symptoms calling for this type of evaluation, such as floaters and flashes of light, are fairly specific and deserve prompt referral to an ophthalmologist. New, small pupil ophthalmoscopes will enable the optometrist to see more clearly into the inside of the eye, and they do not require the use of dilating drugs. The more common eye diseases, such as diabetes, evidence of high blood pressure, glaucoma, optic nerve injuries, edema, or swelling of the optic nerve due to brain tumors, and infections commonly presenting in the back part of the eye can all be diagnosed quite adequately without the use of any dilating drops.

ON THE SIDE EFFECTS OF MIOTICS

Miotics are a large group of drugs of varying properties and actions which are used chiefly in the treatment of glaucoma. They are not diagnostic aids and while certain miotics may be used in one kind of glaucoma, their use in another kind of glaucoma may be wrong. In glaucoma caused by inflammation, all miotics may be contraindicated. Side effects of many miotics are common, often serious, and require an absolute appreciation of high blood pressure, coronary heart disease, circulatory and respiratory collapse (shock), and the way one drug may react with other drugs that the patient may be taking. Only an ophthalmologist can appreciate the consequences of these side effects.

ON TOPICAL ANESTHETICS

Ophthalmologists use topical anesthetics in certain tests to measure the pressure within the eye. This is called tonometry; one test used in determining if a patient has glaucoma. We also use topical anesthetics for minor surgical procedures. New air puff tonometers and others which do not require

anesthesia are more than adequate to satisfy the optometrists' desire to screen a patient for glaucoma. These non-drug methods, coupled with examination of side vision and looking at the optic nerve through normal size pupils, provide adequate data to the optometrist with regard to the possible presence of glaucoma. The final diagnosis and treatment of the glaucoma must rest with the ophthalmologist.

In downgrading the risks of adverse reactions to anesthetic drops, optometric "fact sheets" often refer to medical reports out of context or use authorities with the title "doctor" who are not M.D.'s and who do not personally participate in the day to day eye care of real live people. This is especially significant when the so called authorities are PhD's teaching in optometry schools' or are faculty members of schools of public health whose doctorates are often in vital statistics or health systems planning.

Dr. William Havener, Professor of Ophthalmology at Ohio State, is frequently quoted as an authority who denies existance of toxic effects to topical anesthetics. Yet the item to which optometric fact sheets refer, namely Dr. Havener's repert of the relative lack of a toxicity to a single dose of benoxinate in 1,000 patients, fails to explain that this is only one of many available types of anesthetic drops.

Dr. Havener, a strong opponent of optometric drug legislation, in his recent book, "Synopsis Of Ophthalmology" on page 430, states that "the surface active anesthetics are often relatively toxic and severe systemic reaction may result from applications of excessive amounts of topical anesthetics. Healing the corneal epithelium (outer cell layer) is markedly slowed by topical anesthetics which inhibit cell metabolism and growth...also, local allergies may develop (which may be) recognized by red and swollen eyelids accompanied by itching."

Dr. Robert P. Burns at the University of Oregon Medical School, echoed Dr. Havener's concern in "A Synopsis On Occular Pharmacology And Therapeutics," published by C.V. Moseby Company. He warns that "severe hypersensitivity reactions with corneal clouding have been described after the use of topical proparacaine."

There have been documented examples of patients requiring corneal transplants because an optometrist had illegally provided them with a bottle of proparacaine for pain relief after the optometrist had illegally performed a minor surgical procedure on the cornea. He didn't have the foggiest notion that these drops were potentially dangerous, so when the patient complained of increased pain, he just told the patient to use the drops more often. This, of course, further damaged the cornea.

Even an article in the American Journal of Optometry and Physiologic Optics in November of 1977, stated that "adverse drug reactions are potentially serious and becoming increasingly common."

At a meeting of the New England Ophthalmologic Society in Boston, a symposium devoted to toxic reactions to eyedrops, such as those which optometrists seek legislative approval to use through Bill 664, revealed that mild to severe reactions to these drops in office practice are seen by all ophthalmologists and

often require immediate medical care.

I'm offering to the committee a copy of the 1977 Physicians' Desk Reference for Ophthalmology. This lists, among other drugs, all the approved topical anesthetics, cycloplegics, mydriatics, and miotics, along with the literature required by the FDA that must accompany each bottle of drops or tube of ointment. This includes the possible side effects of each medication. The book also lists systemic medications which can have adverse effects upon the eye, something only the physician can appreciate.

Bill 664 is the more illogical for assuming that a hurry up lecture course in pharmacology, whether in optometry college or in an optometric meeting, could render the optometrist capable of using drugs, especially when the bill places in the hands of the Board of Examiners in Optometry the right to determine the educational and professional competence of its own practitioners. How can members of a board, who themselves have never had training in the use of drugs and the diagnosis of disease, be given the power to pass on the qualifications of their own people in these medical areas.

Ophthalmologists in Alaska have long been well aware of the fact that Alaskan natives have a particular predisposition to a condition known as narrow angle glaucoma. This condition or predisposition in the native population is more than just occasional, and I can assure members of this committee that if optometrists are allowed the unrestricted use of drops that dilate the eye, that they will increase the morbidity among this group of patients to an alarming degree. The ultimate health costs are going to be astronomically increased because of the surgery fees that are going to be required to solve the problems created by the narrow angle glaucoma cases that we will have necessity to operate on. This is a most important consideration, and if anything, the problem in the preceding paragraph has been understated.

Optometrists have recently claimed that the use of drops would provide increased benefits to the patient and aid in earlier detection of eye disease. The fact is, that since the origin of their profession, optometrists have taken pride in and proclaimed their ability to measure the eye, fit glasses or contacts, and refer the patients whose vision deviates from normal for medical evaluation and care, all without the need to use eyedrops. All aspects of eye examinations and vision care, for which optometrists are trained, have been and can continue to be performed without the use of drugs. The noncontact air puff tonometers permits screening of intraocular pressure to detect the possibility of glaucoma without the need to use anesthetic drops. Topical anesthetics, mydriatic, or miotic drops are not required for the fitting of eyeglasses or contact lenses. External defects of the eye can certainly be recognized without the use of eyedrops. Defective vision not correctable by refraction and visual field defects indicative of internal eye or nervous system disorders, can easily be detected without the use of drops. Optometrists are adequately trained to recognize the many symptoms which indicate a need for medical referral. They are not trained in medical diagnosis and, therefore, have no real need to use so-called "diagnostic drops." It is misleading to the legislature and to the

public to imply that any drug is purely diagnostic. The classes of drops optometrists are seeking to use for "diagnostic purposes" are, in fact, used for therapeutic purposes in the evaluation and treatment of eye diseases.

Thank you again for your time in reading this material.

Sincerely,

Sam A. McConkey, M.D.

SAM:ls

cc: Representatives: M.F. Beirne
Don Bennett
Fred E. Brown
Thelma Buchholdt
C.V. Chatterton
Samuel R. Cotten
Steve Cowper
Alfred C. Nakak
Al Ose
Randy Phillips
Sarah J. Smith
Leslie E. Swanson

OPHTHALMOLOGIST — OTOLARYNGOLOGIST — PLASTIC AND RECONSTRUCTIVE SURGEON

WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
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RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.
WILLIAM W. WENNEN, M.D.

March 20, 1978

Representative Al Ose
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 664

Dear Represertative Ose:

I have taken the liberty of writing to Representatives Cotten, Nakak, and Phillips on some points I felt needed clarification following the hearing that you chaired on House Bill 664 during mid March. I hope you can have these letters made available to you.

I would ask you to consider now the fact that dilating drops are not needed to diagnose 99% of the pathologic disease processes associated with the eye. They probably are not necessary for the remaining 1%, if an adequate history is taken from the patient. With the exception of ophthalmology, medical practitioners across the United States evaluate millions of patients a year in the course of yearly physical examinations which include examination of the eyes without the use of drops. They first check your vision (in which no drops are needed) and then look into your eyes with an instrument called an ophthalmoscope. If they can't see in well, it means that there is a reason (e.g., cataract, blood, or corneal scar) that needs referring to an eye physician (ophthalmologist). However, barring this, they can see quite well into the back of the eye and competently diagnose, or at least suspect conditions, such as diabetes, high blood pressure, blood vessel disease, leukemia, optic nerve disease, and a multitude of other various and sundry disease processes that effect not only the eye but the entire body, all without drops. They simply don't need to use them, so they don't use them.

Neurologic disorders, including brain tumors, blood vessel disease in the brain, and multiple sclerosis, are regularly diagnosed by a good history from the patient (no drops are needed) and by a visual field examination in which drops are contraindicated.

Drops don't diagnose, people diagnose! You can't educate a drop, but you can educate people.

A major point was made that drops made it simpler to diagnose refractive errors (the need for glasses) in children. I wonder how optometry has performed this function for all these many years in the past? The truth is that historically, optometry has been denied the use of medications because they were not trained to use them and they have developed excellent ways to

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determine these needs in children without drops. Ask them what "fogging technique" means. This is the mechanism by which they refract young children and do a quite excellent job at it without using any medications at all.

Please don't consider a compromise position on this legislation. Vote against House Bill 664.

Thank you for your time in reading this letter.

I remain, sincerely,

Sam A. McConkey, M.D.

SAM:ls

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
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PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

March 20, 1978

Representative Alfred Nakak
Alaska State House of Representative
Pouch V
Juneau, Alaska 99811

Re: House Bill 664

Dear Representative Nakak:

Although you could not attend the testimony on House Bill 664, allow me to correct some misinterpretations that you may have heard. Roy Box, optometrist from Juneau, said he had dilated thousands, probably 10,000 native patients and never seen a case of narrow angle glaucoma. As you are aware, there are approximately 35,000 native Alaskans residing in Alaska, and probably no one in the state, save Dr. Milo Fritz, M.D., with his 30 years experience, could have had this type of exposure to our native residents. Nevertheless, it has been documented by the Alaska Native Health Service, as well as by independent U.S. and foreign researchers, that there is an extremely high incidence of this problem in Alaska. Optometry says the incidence is 1 in 18,400 - the truth is, in Alaska native adults, the incidence is 1 in 1,900. At the Alaska Native Health Service Hospital in Anchorage, there are not three operations a year or per month, but three operations for narrow angle glaucoma per week. It is further documented by the Alaska Native Health Service that the incidence of this problem in Alaska natives is 18 times that of caucasians. Dilating drops cause narrow angle glaucoma attacks - even optometry agrees with this.

Please don't compromise the eye care available to all Alaskans. Vote to defeat House Bill 664.

I remain, sincerely,

Sam A. McConkey, M.D.

SAM:ls

1919 LATHROP STREET, P.O. 1248, FAIRBANKS, ALASKA 99707, PHONE 456-7767

OPHTHALMOLOGIST | OTOLARYNGOLOGIST | PLASTIC AND RECONSTRUCTIVE SURGEON

WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

March 20, 1978

Representative Sam Cotten
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 664

Dear Representative Cotten:

It was, needless to say, a real education for me to have had the opportunity to see and participate in the legislative process before the House HESS Committee last week. It would appear that you and your colleagues are daily presented with well prepared arguments for and against issues that you, as representatives, must decide upon. This task, obviously, is much more difficult if the legislation concerns technical or professional issues with which you may be unfamiliar. It's unfortunate that House Bill 664 is before you as a legislative action. Issues such as this should be handled medically and obtain appropriate certification rather than by legislative fiat. We are not in the political arena because we want to be, we are in it because medicine is clearly being maligned at the expense of the public health. We did not bring this proposal to you, optometry did. On behalf of the ophthalmologists (medical doctors), let me make quite clear that this is in no way "special interest legislation," in the usual sense. The medical community, and in this case ophthalmology in particular, is the most informed segment of the community at large to present to our elected officials the facts. One wouldn't ask a fuel oil dealer for information on how to build an oil pipeline and expect that this would be the best advice one could obtain.

As you are well aware, this is the fourth year of such effort on the part of organized optometry to pass such a bill in legislatures across the country. Until 1974, there were only eight states where optometrists were using drops for "diagnostic purposes." Six of these eight states had statutes that were inadequate, i.e., did not address the question of drug use (Florida, Indiana, New Jersey, Idaho, Minnesota, and Nevada). Optometry took this to mean that drugs were not prohibited, and so they have been using drops in these states. In 1974, a nationwide effort was undertaken, the effects of which have now reached us.

Ophthalmology was not ready for it and before it could get its "act together," a well funded and aggressive optometric effort got this legislation through several states, among them were California where an early multimillion dollar effort in this "always the first" state succeeded. Oregon passed this legislation by one vote in a legislature whose senate was presided over by an optometrist. It, however, failed in Washington before ever being admitted as formal legislation.

1919 LATHROP STREET, P.O. 1248, FAIRBANKS, ALASKA 99707, PHONE 456-7767

In 1977, "diagnostic drug bills" passed in five states (Montana, Wyoming, New Mexico, North Carolina, and Kansas), while it was defeated in seventeen states. Four of these states were "rural states," the main thrust of optometry being an unequal distribution of ophthalmologists and optometries; thus, our addressing this problem before your committee. No states thus far this year have had such bills made law. It has been defeated in four states this year (Georgia, Missouri, Mississippi, and South Dakota).

The trend should be quite evident - defeat at the rate of four to one in states where there has been an informed legislature and public. I hope this may answer the question of what other states are doing. I must admit to philosophical differences in this approach, but I understand the reasons for doing it.

Please don't consider a compromise position on this legislation. Vote to defeat House Bill 664.

I would appreciate your passing this on to the other HESS Committee members. I plan to write a letter on the topic of Alaska natives to Representative Nakak soon, and I would hope that he will have copies made for you.

Sincerely,

Sam A. McConkey, M.D.

SAM:ls

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

March 20, 1978

Representative Randy Phillips
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 664
Optometric Drug Bill

Dear Representative Phillips:

I have taken the liberty of writing letters on topics brought up by various members of your HESS Committee during the March 13 - 14 hearings, to those committee members involved. I hope you can have these letters that were sent to Representatives Cotten, Ose, and Nakak made available to you.

Allow me, please, a few minutes of your time to set the record straight on PEN. This movement was organized in 1977 to counteract the overwhelming position that medicine was faced with, that is, optometry's well funded invasion into the practice of medicine. The map that was referred to was only for the year 1977, that is so stated on the page. I consider this a poor ill-advised move on the part of optometry for them to consider you could not see through this. I do not apologize for PEN. I would like to quote the PEN statement of purpose: PEN exists solely to utilize its resources and combined influence to present, promote, and promulgate through communication outward and communication inward these simple truths: The American people must be protected by placing and keeping health care in the hands of experts whose abilities are established by having reached a standard level of medical education.

The logical minimum level of education necessary for leadership to protect the public in shaping the optimum health care delivery quality standards in the United States is the degree of doctor of medicine or osteopathy, earned at a school of medicine or osteopathy at an accredited institution of higher learning.

The government at every level should cooperate with medicine in establishing these health safety standards.

Membership in PEN is available to any law-abiding citizen who subscribes to these truths and desires to be informed, as well as to participate, in informing the public at large.

Please find enclosed several issues of PEN for your perusal. They will fit well with the copy given to you by the optometric leader.

1919 LATHROP STREET P.O. 1248 FAIRBANKS, ALASKA 99707 PHONE 456-7767

One appropriate question is, what would ophthalmology do if it had a choice? The answer is, we would do what the final witness for optometry did - he is an employee of Dr. Ken Richardson, M.D., an ophthalomogist from Anchorage, Alaska. This young man from Israel is exceptionally well trained and has been on the periphery of medicine for some time. He does very specialized studies under the guidance of Dr. Richardson and performs an excellent service to the patient. He has a cousin who is a nationally known physician educator in the field of ophthalmology, Dr. Arnold Patz, Baltimore, Maryland. Yet, he knows full well his limitations and capabilities - he testified that "if something is wrong, I don't care what it is." By his choice and his alone, he prefers to work with an ophthalmologist rather than be on his own in a separate optometric practice. The perfect solution, as he is well aware and in which he concurs - witness his current position.

My medical group, the Eye, Ear, Nose, and Throat Clinic of Fairbanks, Alaska, has hired an optometrist who will be working with us beginning this fall. This is not public knowledge due to his fear that if it were known what he planned to do, i.e., work with an eye physician, he would not pass the optometric state board test for licensure in Alaska. We respect his position.

Please don't consider a compromise position on this legislation. Vote against House Bill 664.

Sincerely,

Sam A. McConkey, M.D.

SAM:ls

Hold for Bill HB 633 HB 664

JOHN J. EUFEMIO, M.D., F.A.C.S.
BOX 907
KODIAK, ALASKA 99615
TELEPHONE 486-4191

February 22, 1978

Mr. Terry Gardiner
Chairman House Judiciary
Mail Stop 3100 Pouch H
Juneau, Alaska 99811

Dear Mr. Gardiner:

Please record my support for Bill #633. I have been a physician in Alaska for fourteen years and feel that optometrists should have the capability to use diagnostic pharmaceutical agents. I have been practicing with an optometrist in my office for several years and feel that they can diagnose eye conditions at least as well, if not better, than the average family physician and make appropriate referral. I[illegible]al areas, often optometrists are the only consultative [illegible]e available, and I personally find the optometrist shar[illegible] my office extremely useful.

Sincerely,

Dr. John J. Eufemio, M.D.

cc: Mr. Charles H. Parr

HB 664

Kodiak Professional Building

BOX 1727 KODIAK, ALASKA 99615

March 4, 1978

RE: H.B. 664
Parr Hess
Gardiner H J Com.

Gentlemen:

I am writing in favor of modifying the Statutes under which Optometrists practice in this state. As I understand the situation this bill permits optometrists to utilize certain medications in the eye for diagnostic purposes. This to me, seems a very reasonable proposition.

I realize that there are counter arguments to this position, primarily from physicians specializing in ophthamology. However, in the State of Alaska, especially in rurual areas where apparently any irregular practitioner wishing to practice medicine does so, it seems ridiculous to place restrictions on a group of reasonably trained optometrists.

Sincerely,

Michael Emmick, M.D.

ME/ns

cc: Chairman of House Health Education & Social Services
Chairman House Judiciary Committee

Member file
HB 664

The
ALASKA OPTOMETRIC ASSOCIATION

AFFILIATED WITH
AMERICAN OPTOMETRIC ASSOCIATION

April 21, 1978

Representative Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 664

Dear Representative Gardiner:

I know you have already received some information concerning House Bill 664 and I am writing, of course, to urge your committee's approval of this legislation with one amendment. I would urge your committee to delete the amendment included by the Health, Education & Social Services Committee, page 2, lines 13 & 14. This amendment was put in the bill by Representative Mike Beirne and represents the desire of organized medicine to gain control of all health care professionals not under their wing. The reason for this is, of course, economic. No other legislature that has passed this kind of legislation has seen fit to have an ophthalmologist as a member of the optometric board, but attempts have been made to place these amendments on bills such as this in other states in order to get their foot in the door and hopefully eventually take over and reduce my profession to the status of a physician assistant. I am sure you are aware that this is not a new argument and has been going on since optometry began emerging as an independent profession in the early 1900's. The American Medical Association has gone so far as to pass a resolution in a convention that they held in Seattle some time in the 1950's condemning optometrists as cultists and making it unethetical for any physician to teach or offer knowledge to any practitioner or school of optometry. This resolution has been rescinded as a result of a threat of a law suit, but it has been the attitude of medicine that no other than physicians, who are not controlled by the economics of medicine, shall have so-called medical knowledge. The result has been of course that independent health care providers have gained their own expertise in their particular area of health care and are now well established and optometry and dentistry are two of the primary examples of this kind of educational evolution. My profession is also rapidly growing and is in the process of developing five new schools to add to the somewhere around thirteen or fourteen that now exist in the United States as compared to the medical profession which has a much

larger number of schools than optometry but who also have only five new schools developing. Every new optometry school that has been developed is a result of a tooth and nail battle with the state ophthalmological and medical societies, again as a result of their worry of competition.

It's sort of like climbing a mountain that is tipped backwards and I'm sure that you can well imagine that my profession has earned its status as the third largest health care providing profession in the United States and must have something to offer when you consider the old struggle that has and will continue to go on as we continue our legitimate attempt to keep pace with modern techniques and knowledge.

There has been no argument to the concept that 95% of the care provided by ophthalmologists is also equivalent to the care provided by optometrists with only 5% left in the absolutely medical realm.

Considering this fact, a physician can provide vision care services with only a medical license and I am reasonably sure that there are no areas in a test for a medical licensure that covers the provision of vision care. I am also reasonably sure that very little of the certification examination for ophthalmology, which is a national board, covers much on vision care provision. The placement of an ophthalmologist on the optometry board is an attempt to establish a precedent which has no real value when you consider the stated function of licensing boards is to protect the public and has nothing to do with one profession attempting to subvert the other. Again, amongst the 15 to 18 other states that have passed this type of legislation recently, none have seen fit to put a physician of any scope on the board of examiners in optometry and conversely optometry has not asked to have one of their members serve on the medical examiner's board, even though physicians can provide whatever care they see fit with no test for qualifications in the vision care area.

Reams of testimony have been presented by the medical associations and its various members purporting to show optometrists are not qualified to handle and utilize these agents in their practice. Claims have been made that optometrists are going to prescribe these agents for treatment of disease and are vastly enlarging the scope of the services they already provide. None of these even approaches the truth. It is not the intent of the Alaska Optometric Association to seek to treat eye disease through this legislation and it clearly states so in the bill. It is also not the intent of the Alaska

Optometric Association to enlarge its scope of practice. These agents will be used in procedures that are already in use by optometrists throughout the nation and most of the free world and merely provide the optometrists to choose more and in some cases more accurate instrument to screen patients for eye pathology and to upgrade his provision of vision care services to certain selected patients. It is our belief that with the use of drugs that dilate the pupil we will be able to earlier detect eye disease and, therefore, make better and more treatable referrals to eye physicians. The drugs that are used to numb the front of the eye will enable the optometrist to use a wider range of instruments to screen the patients for glaucoma, again for referral to the proper medical practitioner. The instrument that is widely used and readily available now is absolutely not portable and, therefore, limits the optometrist's ability when he is holding clinics outside of his own offices, which approximately 70% of the practicing optometrists in Alaska now do.

The drops that make the pupil smaller are intended for emergency treatment of glaucoma that could be induced with the pupil enlarging drug. This drug was added to the classes of drugs enacted in Oregon for use by optometrists at the request of Oregon physicians; so it is also included here. There is a conservative 15 year's worth of optometric experience using these agents in the P.H.S. and military doctors in Alaska and not one case of glaucoma has been induced, so you can see that the chances are extremely remote.

Optometrists are just as liable for detection of disease as are physicians and HB 664 will also help protect the doctor and patient from this possibility. I am enclosing a 1971 definition by Elliot Richardson of optometry that recognizes optometric training and sets out the responsibilities of optometrists in caring for their patients.

If you do not feel you or a member of your committee cannot amend HB 664 removing the eye physician from the optometry board, I would like to suggest a couple other approaches. The legislature would mandate a committee of 3 persons, an optometrist, a pharmocologist and ophthalmologist to be recruited by the optometry board to act as an advisory group to determine qualifications of optometrists and recommend specific drug lists; or a physician recommended by the Alaska Optometric Association be appointed to the board instead of an ophthalmologist.

Dr. Craig has asked me to comment on your letter concerning a mutual agreement between optometry and medicine. I was President of the Alaska Optometric Association in 1971 and invited every ophthalmologist in the state to attend our annual meeting as my guests so there would be no registration or other costs to them. Most did not give me the courtesy of a reply, some replies were too unprofessional to pass on, and only one man attended and was told not to return or he may have problems. I see no change in this isolationist attitude. I hope you can realize that the first move in this direction was made by my group in 1971 with a slap in the face response. Hopefully this attitude will change some day, but I hope the poor relations of our two organizations will not interfere with a definite improvement in services optometrists could provide with the passage of HB 664.

Sincerely,

Roy Box

Roy A. Box, O.D.
Chairman, Legislative Committee
Alaska Optometric Association

RAB:rs
Enclosure

ELLIOT RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION AN WELFARE, FILLED A 1971 REPORT WITH THE PRESIDENT AND CONGRESS ON ADMINISTRATION OF THE HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT.

The report contained the following language concerning optometry:

> "Optometrists are trained to detect any departure from the optimally healthy eye. The scope of optometric services has <u>expanded</u> beyond basic clinical refractions, fabricating and dispensing eyeware; now included are visual screening examinations, clinical intrumentation, contact lens fitting, visual training, orthoptics, low-vision aids for the partially sighted, artificial eyes, industrial vision consultation and public and community health. The most rapidly expanding area of service is in school consultation and remedial services for low achievers. The optometrist is trained and bound by professional ethics to refer patients in whom indications of disease have been found to a physician or other health practitioner for definitive diagnosis and appropriate medical surgical or other treatment."

Oregon V

Rep. Gardner.

This is the moderate reply I received and I did not ask him to speak, merely attend. He did the same thing all physicians do; jumped to the conclusion that optometrists treat eye disease which is in error.

THOMAS J. HARRISON, M.D.
Diseases and Surgery of the Eye
825 L STREET, SUITE 501
ANCHORAGE, ALASKA 99501
Telephone 277-4151

May 26, 1971

Roy A. Box, O.D., President
Alaska Optometric Association
Juneau, Alaska

Dear Dr. Box:

I appreciate your request to speak at the annual Alaska Optometric Association Convention in Fairbanks, June 9th to the 11th. Other commitments make it impossible for me to participate in the meeting however; I am interested and concur with your suggestion that optometrists and ophthalmologists develope a more cooperative relationship. I am also anxious to correct a misunderstanding as to the type of information I would be able to offer if attendance at your a meeting were possible. The recognition, diagnosis and treatment of specific eye pathology is the responsibility of the physician. To speak of specific eye pathology would therefore, not be particularly pertinent. However, the appropriate conditions and timing of referrals from optometrists to ophthalmologists is pertinent and of extreme importance. It is this subject to which I would have addressed my comments.

All sub-normal visual acuities that do not have a physician confirmed diagnosis must be referred promptly. Once an

established diagnosis is made and all possible routes of treatment have been explored and the condition has been proven stable, then the continued care of the patient falls within the realm of optometry. All suspected asymptomatic pathology found should also be referred. It is of importance that disease entities, even those entities which have a rather predictable course such as cataracts, should be promptly referred to a physician. For example, referring of a cataract for surgical treatment several years after its initial discovery by the optometrist is not acceptable. Many cataracts are secondary to serious retinal pathology. Examination at an early stage, when the early cataract still allows for adequate retinal examination, will prevent missing serious pathology. Another example, in point, is squints. Strabismus cases need to be evaluated by an atropine refraction some time along the line of their treatment. It is also important to definitely establish that the squint is not caused by a sixth nerve palsey or other serious disease entity. HB 884 would permit this procedure by optometrists we already routinely check for this new palsy etc.

Once a referral is made to an ophthalmologist from an optometrist and a diagnosis made and treatment instigated it is the duty of the ophthalmologist is to acknowledge the referral by letter and if the patient so desires return him to the optometrist for refraction.

Thank you again for the offer to participate in your annual convention. I believe that the above paragrpahs adequately summarize the remarks that I would make.

Sincerely yours,

Thomas J. Harrison MD

Thomas J. Harrison, M.D.

file HB 664

DR. JOHN T. SHANK
OPTOMETRIST
P. O. BOX 827
KODIAK, ALASKA 99615

TELEPHONE 486-5504

April 19, 1978

Mr. Terry Gardiner
Chairman House Judiciary
Mail Stop 3100 Pouch H
Juneau, Alaska 99811

Dear Mr. Gardiner:

As a member of the Optometry Board of Examiners, I would like to voice my concern about an amendment made by the HESS Committee to House Bill #664.

The amendment to put an ophthomologist on the Optometry Board is not justifiable. Ophthomologists are well trained in surgery and pathology of the eye, but they have no optometric training. It would make as much sense to put an optometrist on the Medical Board to determine their competency. If this amendment is allowed to stand, I would recommend that the above be done.

The bill as written before this amendment was added was a worthwhile piece of legislation.

I hope that you and your committee will see fit to do justice to this bill.

Thank you for your time and patience.

Sincerely,

John T. Shank O.D.

Members file HB664

April 20, 1978

Representative Randy Phillips
Pouch V
Juneau, AK 99811

Dear Rep. Phillips:

Thank you for your letter concerning HB 664 in which you asked my opinion relative to the commitee substitution. The placing of an ophthalmologist on the optometry board raises serious objection from me.

While ophthalmology deals with diseases of the eye and performs surgery upon the eye, optometry is the only profession specifically licensed in the United States to deal with human vision and related visual problems. Optometry does not need to be policed by a related but distinctly different profession.

The optometrist has spent four years training for his profession. All thirteen optometry colleges now include a comprehensive study of pharmocology. The pharmacological curriculum (enclosed) is accepted by The Association of Schools and Colleges and is similar to that taught to medical students.

Modern technology has made sophisticated diagnostic equipment available, but their value to the patient diminishes when the law disallows them to be used in conjunction with diagnostic pharmaceutical agents. The optometrist's ability to view a larger portion of the eye with the use of these drugs, will result in the earlier detection of eye diseases. Of course, early detection will result in the early referral to an ophthalmologist.

Recent graduates from optometry colleges are now specifically tested in the use of diagnostic drugs by the state boards. Having passed this exam, they should not require policing from another profession. I find that none of the other states which have passed this drug legislation have an ophthalmologist sitting on their boards.

I hope I have answered the question for you. Please let me know if I can furnish any further input.

Respectfully,

Ed Craig, O.D.

cc: Box, Gardiner
encl.

ASSOCIATION of SCHOOLS and COLLEGES of OPTOMETRY

SPECIAL ISSUE OF ASCOPE

Vol. 2 Number 9 June 6, 1975

Pharmacology Curriculum Guidelines for Continuing Education Courses

Prepared by the Council on Academic Affairs of the Association of Schools and Colleges of Optometry, Richard Hazlett, O.D., Chairman

These guidelines have been prepared for distribution throughout the optometric profession and education system.

Before final adoption of these guidelines, consideration was given to comments received from a wide professional audience.

Adopted
March 13, 1975

Guidelines for Pharmacology Continuing Education

I. Purpose: To establish guidelines for continuing education courses in pharmacology for practicing optometrists.

II. Course objectives: to increase the optometrist's knowledge of:
- A. the systemic effects of systemic medications from a mechanistic, diagnostic and therapeutic standpoint,
- B. the ocular effects of systemic medications from a mechanistic, diagnostic and therapeutic standpoint,
- C. the ocular effects of ocular drugs from a mechanistic, diagnostic and therapeutic standpoint,
- D. the systemic effects of ocular drugs from a mechanistic, diagnostic and therapeutic standpoint, and
- E. diagnostic ocular pharmaceutical agents (DPA) --- theory and practice.

III. Guidelines for the course content.

- A. General Pharmacology
  - 1. Principles of Drug Actions
    - a. Dosage forms
    - b. Routes of administration
    - c. Pharmacodynamics
      - (1) absorption
      - (2) distribution
      - (3) fate (metabolism)
    - d. Mechanisms of action
      - (1) agonists and antagonists
      - (2) receptors and acceptors
      - (3) synergism, additivity and competitive antagonism
  - 2. Host Factors and Placebos
  - 3. Drug Categories (to include adverse ocular and systemic effects)
    - a. Neuropharmacologic agents
      - (1) anesthetics
      - (2) CNS depressants (general)
      - (3) effects of drugs on synaptic transmission
      - (4) major and minor tranquilizers
      - (5) antidepressants
      - (6) CNS stimulants (general)
      - (7) analgesics (selective CNS drugs)
    - b. Cardiovascular agents
      - (1) hemopoietics
      - (2) antihypertensives
      - (3) anticoagulants
      - (4) cardiac glycosides
      - (5) antiarrhythmics
      - (6) vasolidators

c. Renal agents
d. Gastro-intestinal agents (especially anticholinergics)
e. Endocrine drugs (including steroids and the birth control pills)
f. Antiallergic agents
g. Antibiotic-chemotherapeutic agents.
h. Antifungal agents
i. Disinfectants
j. Vitamins
k. Antiviral agents
l. Cancer chemotherapeutics
m. over-the-counter (OTC) agents

4. Drug abuse
5. Drug contraindications during pregnancy

B. Ocular Pharmacology
1. Principles of Drug Actions
a. Dosage forms
b. Routes of administration
c. Pharmacodynamics
(1) absorbtion
(2) distribution
(3) fate (metabolism)

2. Drug Cateogries, to include adverse ocular and systemic effects, and
a. Neuropharmacoligic agents (autonomics)
(1) review of nervous systems
(2) autonomic drugs
((a)) sympathomimetics
((b)) parasympathomimetics
((c)) sympatholytics
((d)) parasympatholytics
(3) ocular anesthetics
b. Agents affecting trans-membrane fluid transport
c. Antibacterial agents
d. Antinflammatory agents
(1) antihistamines
(2) steroids
(3) sympathomimetics
(4) parasympatholytics
e. Antiviral agents
f. Antifungal agents

3. Differential Diagnosis of Ocular Neuromuscular Disorders
4. Review of Ocular Side Effects of Systemic Drugs
5. Review of Systemic Side Effects of Ocular Drugs
6. Review of Ocular Side Effects of Ocular Drugs
7. Ocular Urgencies and Emergencies, including glaucoma management
Contraindications During Pregnancy
Urgencies and Emergencies
tice and Jurisprudance

IV. ctivities

1. patient history
   a. Medical history
   b. Patient's current drug regimen, and the effects of these drugs on ocular structure and function
2. Sterile technique--proper instillation of "drops"
3. Refractive examination and fundus examination
   a. pre-medication procedures
      (1) advice to patients (effects of DPAs)
      (2) tonometry
      (3) angle evaluation
   b. Application of mydriatic/cycloplegic and related examination procedures
   c. Post-medication procedures
      (1) corneal examination
      (2) tonometry
      (3) advice to patient (i.e., return of pupil to normal, etc.)
   d. Diagnostic techniques and instrumention
      (1) tonometry, including Goldmann applanation
      (2) angle evaluation with the biomicroscope, including gonioscopy
      (3) stain analysis
      (4) monocular and binocular fundus examination, including indirect ophthalmoscopic and biomicroscopic procedures
4. Clinical competency

A. comprehensive examination procedure will be established to evaluate each student as to his skill and competency in the use of DPAs and relevant instrumentation, and

B. the effect of systemic medication on ocular structure

C. the effect of ocular instillations on systemic sturcute and function.

JUN 9 1975

Editor's view

FUNDUS PHOTOGRAPHY

Twenty-two states now permit optometrists to use pharmaceutical agents in diagnosis. This authorization has opened up many new vistas of examination heretofore unavailable to O.D.'s. One of these, retinal photography, is explored in this issue.

Previously, office photography in optometry was limited to contact lens fitting, strabismus records, and the like. With mydriatrics and with advanced equipment technology, optometrists can avail themselves of fundus photography and compile patient records of internal normalities and abnormalities.

Complete and comprehensive records are the best defense against malpractice suits. What better way to prove that you viewed a patient's fundus than by taking a photograph of it! And what better practice management is there than to show a patient what the retina of his eye looks like.

Fundus cameras are rapidly becoming important tools of the modern optometrist. They will soon take their place with biomicroscopes as basic equipment in the practice of optometry.

This month we carry an important article on the management aspects of fundus photography written by a relatively new O.D. who has made the technique an important part of his practice. You may find after reading it that this is an area that you too should embrace.

Irving Bennett, O.D.

18 other states (1.) unmet public need - inadequate care
(2.) use drugs is not risk free
(3.)

Original sponsor: Commerce Committee

Offered: 4/14/78
Referred: Judiciary

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 664

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the practice of optometry."

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

* Section 1. AS 08.72.300(2) and (3) are amended to read:

(2) "optometry" is the employment of means or methods [, OTHER THAN THE USE OF DRUGS,] for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;

(3) "practicing optometry" means the diagnosis [, BY MEANS OR METHODS OTHER THAN THE USE OF DRUGS,] of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;

* Sec. 2. AS 08.72 is amended by adding a new section to read:

Sec. 08.72.305. USE OF DRUGS FOR DIAGNOSIS. (a) No person practicing optometry may use drugs for diagnostic purposes unless he has

(1) passed the board's examination on the subject of pharmacology as it relates to optometry and the use of topically applied drugs; and

(2) completed courses and clinical experience approved by the board and offered by a recognized and accredited school or college of optometry and passed an examination, given by that school or college, which relates to topical application of drugs to the eye,

(b) No person practicing optometry may administer drugs except for

including proper responses to reactions which may result to topical applications to the eyes.

recognition of pathology and diagnosis of a vision anomaly.

(c) Topical anesthetics, mydriatics, and cycloplegics may be used by a person practicing optometry under conditions approved by the board; the board may authorize the use of myotics for emergency purposes only.

* Sec. 3. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of five persons, appointed by the governor. Members serve staggered terms of three years. [THE TERMS OF THE PUBLIC MEMBERS OF THE BOARD SHALL BE SET SO THAT THEY DO NOT EXPIRE AT THE SAME TIME.]

* Sec. 4. AS 08.72.040 is amended to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. One shall be a licensed physician, board certified in ophthalmology. One shall be a person who has [TWO SHALL BE PERSONS WHO HAVE] no direct financial interest in the health care industry.

Introduced: 1/19/78
Referred: Health,Education &
Social Services and Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

HOUSE BILL NO. 664

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the practice of optometry."

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

* Section 1. AS 08.72.300(2) and (3) are amended to read:

(2) "optometry" is the employment of means or methods [, OTHER THAN THE USE OF DRUGS,] for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;

(3) "practicing optometry" means the diagnosis [, BY MEANS OR METHODS OTHER THAN THE USE OF DRUGS,] of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;

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(1) passed the board's examination on the subject of pharmacology as it relates to optometry and the use of topically applied diagnostic drugs; or

(2) completed a course approved by the board and offered by a recognized school or college and passed an examination, given by that school or college, which relates to topical application of drugs to the eye.

(b) No person practicing optometry may administer drugs except for

a diagnostic purpose.

(c) Topical anesthetics, mydriatics, cycloplegics and myotics, may be used for diagnostic purposes by a person practicing optometry under conditions approved by the board.

HB
727

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 253

Amendment No. 2--Establishing Magistrate Salaries. Further Amending Order No. 9

IT IS ORDERED:

Supreme Court Order No. 253 is amended by (1) adding "Angoon" and "McGrath" to the list of Magistrate I positions; (2) removing "Cold Bay" from the list of Magistrate I positions and adding it to the list of Magistrate II positions; (3) adding a new Paragraph 4 and renumbering the old Paragraph 4 as Paragraph 5; (4) removing "Dillingham" and "Nenana" from the list of Magistrate II positions and transferring them to a new Paragraph 4; and (5) increasing the salary figures in Paragraphs 1 and 3 by five percent.

The amended Order in its entirety is as follows:

1. There are established three salary levels for magistrate posts. The base annual salary for each level is as follows:

Magistrate I	$ 6,787
Magistrate II	$13,917
Magistrate III	$21,836

Geographic cost of living adjustments shall be provided in accordance with applicable statutes.

2. The following magistrate positions are allocated to the designated salary levels:

Y016 Magistrate I

Angoon	Aniak	Buckland
Craig	Emmonak	Galena
Gambell	Hoonah	Hooper Bay
Kake	Kasigluk	Kiana
Mekoryuk	McGrath	Mt. Village
Noorvik	Pelican	Point Hope
Rampart	St. Mary's	St. Paul Island
Sand Point	Savoonga	Seldovia
Sitka	Tanana	Teller
Tununak	Unalakleet	Unalaska
Wainwright	Wales	Yakutat

Whitlier
Selawik

Magistrate II

Cold Bay	Fort Yukon	Healy
Naknek	~~Selawik~~	Skagway
		Nenana

Magistrate III

Barrow	Cordova	Haines
Petersburg	Seward	Tok
		Wrangell

3. The annual base salary of the present incumbents of the following positions shall be $28,175:

Delta Junction	Kenai	Palmer
Glennallen	Kotzebue	

Geographic cost of living adjustments shall be provided in accordance with applicable statutes. At the time the present incumbent resigns from one of the above positions, the salary for that position will be re-evaluated.

4. The annual base salary of the present incumbents of the following positions shall be $21,000:

Dillingham ~~Nenana~~

Geographic cost of living adjustments shall not be provided. At the time the present incumbent resigns from one of the above positions, the salary for that position will be re-evaluated.

5. When any magistrate position listed above becomes vacant, the supreme court may provide for a salary higher than is herein provided for that position for an appointee whom the court determines possesses extraordinary qualifications or when the court determines other special circumstances exist justifying a departure from the salary provided herein for that position.

DATED: _____

EFFECTIVE DATE: Nunc pro tunc as of January 1, 1977

Chief Justice

Feb-9-1978

Dear Beulah-

Ill try to call you again, but in the event I can't reach you — would you please appear in my behalf on H.B. 727 and H.B 456 at the 3PM Feb 10th meeting.

My main concern is that this committee understand that magistrates are dedicated people with many hats to wear. We are at the grassroots of "the" system and meet the public on their first encounter of a problem. Other judges meet these same defendants, but usually only after they have had their first Court contact. Thus meaning the Superior Court judges and the justices.

As full time magistrates we deal with all types of problems — and people. We live with these people and their surroundings everyday.

As you can recall, I have been in this position for many years and have "made-do" and "done" without the beautiful plush surroundings that many "judges" have enjoyed for years. I now have a beautiful building and am proud of it. However, I recall the days of make-shift boxes too.

I have enjoyed and dedicated my life to my job and serving

come to me to ask for assistance and guidance. Many of these are legal people and attorneys of long practice. Thus rewarding my hours and years serving them.

Hon. Tony Diamond appointed me to this position and said - "Never hear a case before you without putting a little heart into it." I've tried and trust I may have the privilege of continuing to do what the law says tempered with common sense and love of my fellow beings.

Best wishes & Thanks Beulah

Dorothy Sipton

Tell Al Ose — I sure appreciate his help for us "bush" people!!

Memorandum

Alaska Court System

TO: The Hon Terry Gardiner,Ch.
State Legislature
Judicary Committee
Pouch V,Juneau,Ak.99811

DATE : March 15,1978

FROM: Carl W.Heinmiller,Magistrate
Drawer D,Haines,Alaska 99827
Board Member; Alaska Magistrates Assoc.

SUBJECT: HB 727

I wish to state the reason for my unhappiness at the hearing on March 14th at 3 pm regarding HB 727. I received a call from your office that the bill was coming up before your committee. Therefore, I told off a day's work, spent $70 on airfare plus other expenses to find I was unable to testify.

The question seemed to be "what is a fulltime magistrate"? There are four classes of Magistrates: Class I in the $28,000 range
Class II in the $22.000 range
Class III in the $15,000 "
Class IV in the $7,500 "

The first two classes, by order of our Presiding Superior Court judges requires them to work a min. of 37 1/2 hrs. per week. The Class III is 20 hrs. per week and Class IV is less. HOWEVER, the parttime Magistrates all have other jobs. I underlined minimum, as all magistrates are subject to call ,25 hrs a day, seven days a week. There is no suc' thing as compensatory time . I know of no other State jobs that has that kind of demand, except judges. There is no overtime, either.

I can see P ul Arnholdt's"problem" , but why should Magistrate be required to be second class to Judges wheh they have been declared judicial officers? If the problem exists in the court's retirement system, why defeat this bill as it will have no effect on the problem.

Should the bill come up again , I would like to be informed, however I do not want to spend $200 to listen to someone present faulty information,or at least information that can become misundestood.

CC: Mike Miller
Jim Duncan
Bill Miles
Lisa Rudd
Dick Eliason
Fred Brown

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 13, 1978

SUBJECT: HB 727 - Retirement of magistrates

TO: House Judiciary Committee
ATTN: Bob Speed, A.A.

FROM: J.L. Baldwin, Legislative Counsel

I have reviewed HB 727 as requested in your undated memorandum (copy attached) and this correspondence is to confirm our telephone coversation of February 16, 1978. The questions raised concerning this bill could be resolved by making the following changes:

(1) repeal AS 22.25.010(g); and

(2) delete section 1 of HB 729 and replace it with the following new material:

* Section 1. AS 22.25 is amended by adding a new section to read:

Sec. 22.25.100. Definitions. In the chapter, unless the context clearly indicates otherwise,

(1) "justice" means a supreme court justice; and

(2) "judge" means a superior court or district court judge or a full-time magistrate who has not retired before July 1, 1978.

You are correct in your assumption that AS 22.28 was repealed by referendum. If the Committee directs, I will prepare a committee substitute for their review.

JLB:hjd

Attachment

file HB 727

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1978

Legislative Board of Retirement
Penefits
c/0 Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Sirs:

The Committee has under co..sideration HB 727, which provides for inclusion of full-time magistrates under the judicial retirement systems. Testimony was given on tnis bill on Feb. 10. Further consideration is not foreseen before March 1.

According to the Session Laws of Alaska, 1977, it is the responsibility of the Legislative Board of Retirement to prepare a detailed fiscal analysis of legislation which would make changes in the retirement system (SLA 130, section 24.20.540).

The session laws of 1977 also give the Retirement Board the responsibility for preparation of fiscal notes of bills affecting the retirement system (SLA 130, section 24.30.037).

The Committee would like to have this information ready at the time they next consider the bill, which will be sometime after March 1.

Please do not hesitate to contact this office if you have further questions.

Sincerely,

Bob Speed

Robert Speed, Administrative Assistant

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Bill Berrier

MEMORANDUM

TO: Bill Berrier

FROM: House Judiciary,
Bob Speed, A.A.

RE: HB 727, including magistrates in the judicial retirement system.

We need information on the impact of the changes this bill would make in regard to two statutes:
AS 22.25.020 and
AS 22.28.060, the latter of which we hear may have been repealed last year.

What would the impact be? And, would a change imposed by HB 727 or a similar bill necessitate changes in the statutes cited?

#

Send memo
Telcon 2-16-78

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 727

The board submits the attached fiscal note as an update of its previous comments on the fiscal impact of HB 727.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 727
Title: Inclusion of Full-Time Magistrates Under the Judicial Retirement System
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected: Administration - Division of Retirement & Benefits
Program Category Affected: Retirement and Benefits
Budget Request Unit(s) Affected: Non-Contributory Judicial/Full-Time Magistrate

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
100	BENEFITS		279.6	293.6	308.3	323.7	339.9
	TOTAL	-0-	279.6	293.6	308.3	323.7	339.9

FUNDING (Thousands of Dollars)

GENERAL FUND		279.6	293.6	308.3	323.7	339.9
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Fiscal note represents cost on a funded basis for the inclusion of past and future service for existing full-time magistrates under Non-Contributory Judicial Retirement System (AS 22.25).
2. Fiscal note does not include the cost on a funded basis for the existing Judicial System (AS 22.25) (these costs identified in fiscal note for SB 91--first year cost equals $1,832.7).
3. The Alaska Court System cannot provide a definition for "full-time" magistrate (see attachment), so for purposes of this fiscal note all magistrates earning $15,000 or more per year were considered full-time (16 out of 50) with an average salary of $24,939.
4. Assume salaries for full-time magistrates increase at 5% per year.
5. Employer contribution rate of 70.03% of covered payroll is required.

FY 79 covered payroll for full-time magistrate	$399,020
Employer contribution rate	.7003
FY 79 employer cost for full-time magistrates	$279,633

IV. DATE 3/01/78 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement & Benefits
PHONE 465-4460

Paul B. Arnoldt

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Schaeffer
Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

Gardiner

this page

HB 727

February 24, 1978

.egislative Board of Retirement Benefits analysis and recommendations
in:

House Bill No. 727

No detailed fiscal analysis is possible at this time.

The board unanimously recommends that HB 727 do not pass; one member was absent.

The board feels that the long term costs of the judicial retirement system cannot be properly assessed by the board or the taxpayers of the state until the system is placed on a funded basis similar to the PERS and the TRS. The board is unwilling to recommend increasing the liabilities of a system which is unfunded. The board questions whether the inclusion of magistrates within the judicial retirement system is consistent with the purposes for which the system was established.

SUMMARY OF HOUSE BILL NO. 727

Retirement system affected: PERS

Amends the noncontributory judicial retirement system by adding coverage for full-time magistrates, removes full-time magistrates retiring after July 1, 1978 from the public employees' retirement system, and refunds all employee contributions to PERS of affected full-time magistrates, and restores employer contributions to the general fund.

The Act takes effect July 1, 1978.

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

SUSAN BURKE
DEPUTY ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-8611

February 24, 1978

Hon. Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 727

Dear Representative Gardiner:

This is in response to your Committee's request for (1) a description of our existing system for distinguishing between full time and part time magistrates for purposes of leave benefits, and (2) a definition of "full time" magistrates for purposes of retirement benefits under House Bill 727.

During 1975, our personnel office conducted a survey of all magistrate posts in order to develop a standard schedule of salaries for magistrates. This survey included on-site visits to most of the magistrate posts. As a result of this undertaking, baseline 1975 data was developed which included, among other things, the number of hours each magistrate was required to spend in his or her office. Those who were required to keep regular office hours of 8:00 to 4:30 were considered "full time" for purposes of applying leave benefits under AS 39.20. (It should perhaps be noted that the number of hours worked was not ultimately used as one of the criteria for salary setting.)

Having established baseline data, we now merely update it to reflect any changes in circumstances that would have a bearing on salary level. Through this process we can also determine whether the workload has increased or decreased to the point that a change is warranted in the application of leave benefits.

After having some time to reflect on your request for a definition of "full time magistrate" that might be used in House Bill 727, we find that it is impossible to do so. As you know, we consider all magistrates as full time for purposes of retirement benefits. Unless all magistrates are to be included in House Bill 727, then a definition of "full time magistrate" necessarily involves including some magistrates and excluding others. The basis for making this distinction involves a policy determination that we believe only the Legislature can make. The judiciary has already made a policy determination that all magistrates should be treated equally for retirement purposes, and has expressed the view that all magistrates should be included in the existing judicial retirement system.

I realize that this response does not provide much assistance toward developing an accurate fiscal analysis of the bill, but I hope you understand the inherent limitations we face. If tere is any other information we can provide, please let me know.

Sincerely,

Susan Burke

Susan Burke
Staff Counsel

Box 271 Haines,
Alaska 99827

Feb.28,1978

The Hon.Terry Gardiner,Ch.
Judiciary Committee of the House
Pouch V
Juneau,Alaska 99811

Dear Terry:

As some members of the "legal society" do not agree with HB 727,in that Magistrates are not to be classified as Judges, i.e. District Judges, I am enclosing an excerpt from a recent ruling by Judge Rowland of the Superior Court in Anchorage. Of course, the plaintiff might appeal this judgment to the Supreme Court who could reverse Judge Rowland's opinion.

The Magistrate's Association had understood that the the Court administration would neither support our request or opposed it as far as what HB 727 is intended to do, however, they have not remained silent, as you know.

Please advise as to the status of HB 727. If there is to be further hearings, we would be glad to attend and testify. It is vital that this bill be passed by this Legislature.

Sincerely,

Carl W.Heinmiller
Haines Magistrate

CC:Malone
Schaeffer
Miller
Duncan
Miles
Eliason
Magistrates.

[illegible] that section provides as follows:

> Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law. [Emphasis added.]

The defendants have not argued, and it cannot be maintained, that magistrates are not judges and, therefore, are excluded from the purview of Article IV, Section 4. The functions

and responsibilities of magistrates are judicial in character. Their duties are in large measure coextensive with, and in no respect different than, those of district court judges. AS 22.15.100; AS 22.15.110; AS 22.15.120. Magistrates are statutorily defined along with justices of the supreme court and other judges as "judicial officers." AS 22.20.010. Magistrates are granted the same judicial powers and prerogatives necessary to carry out their judicial responsibilities as all other judicial officers. AS 22.20.030.

The aforementioned constitutional mandate, requiring a term for a judge of any court, is consistent with the idea, universal in American jurisprudence, that an independent judiciary is not only desirable, but indispensible. This notion of judicial independence extends, not only to freedom from executive and legislative interference with the decision-making process, but to all unwarranted pressure. Our concepts of justice and due process of law require that a judge, when [illegible] of a particular cause or considering

Rt. 6, Box 4136
Juneau, Alaska
February 28, 1978

Robert Speed, Administrative Assistant
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska

Dear Mr. Speed:

In answer to your inquiry, HB 727 does not appear to conflict with the Salary Commission, since the compensation and benefits for magistrates are not under our review.

You also ask "if we change the law, will that bring magistrates under state retirement system?" Your question indicates it may not be clear to you that the state retirement system and the judicial retirement system are 2 different systems. Magistrates are now members of the state retirement system, PERS (a contributory system). The judicial retirement system, as it applies to judges, is non-contributory with better benefits than PERS. HB 727 would move them to this better system.

There has been some movement in the past to alter the non-contributory part of the judicial retirement system, and this may surface again in the future. Because of the constitutional provision against reducing compensation for judges, it is our understanding that the judicial retirement system cannot be made contributory unless accompanied by a raise of an amount at least equal to the first contribution, or some similar arrangement. I assume magistrates are not covered by the constitutional prohibition. Would that create any special problems if the judicial retirement system were to become contributory?

Thank you for asking the opinion of the Salary Commission on HB 727 and your offer to inform me when you will next be considering it.

Sincerely,

Kathleen W. Diebels, Chairman
Alaska State Salary Commission

Rt. 6, Box 4136
Juneau, Alaska
February 28, 1978

Robert Speed, Administrative Assistant
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska

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Thank you for asking the opinion of the Salary Commission on HB 727 and your offer to inform me when you will next be considering it.

Sincerely,

Kathleen W. Diebels

Kathleen W. Diebels, Chairman
Alaska State Salary Commission

Introduced: 2/3/78
Referred: Judiciary and Finance

IN THE HOUSE BY SCHAEFFER

HOUSE BILL NO. 727

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the inclusion of full-time magistrates under the judicial retirement system; and providing for an effective date."

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

* Section 1. AS 22.25.010(g) is amended to read:

(g) In this chapter the [THE] word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise means a superior court or district court judge or a full-time magistrate who has not retired before July 1, 1978.

* Sec. 2. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the superior or district courts of Alaska and full-time magistrates except those magistrates who retired before July 1, 1978;

* Sec. 3. Within 90 days after the effective date of this Act, all amounts contributed by a full-time magistrate toward retirement under AS 39.35 shall be refunded. Amounts credited to retirement accounts of full-time magistrates by reason of employer contributions under AS 39.35 shall be restored to the general fund.

* Sec. 4. This Act takes effect July 1, 1978.

11 full time magistrates

[22.25.020] retirement pay repealed by referendum
[22.28.060]

Retroactive —

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM FEB. 10, 1978

HB 727

bill scheduled for consideration feb. 10, 1978

Kellus Sewell, department of administration, called in regard to this bill, saying that a schedule conflict prevented him from being at committee this date, and asking that consideration be postponed.

Sewell also said a fiscal note has not been prepared yet on the bill.

He also requested several days for consideration of the bill.

At least two people, both from out of town, are scheduled to testify today on this bill. They are Carl Heinmiller, magistrate in Haines, and Sheldon Sprcker of Glenallen. Mr. Heinmiller has to leave early today, and has asked that his testimony be considered early in the meeting.
Others may testify.

Mrs. Ose will testify B

Susan Burke - Alaska Court System

Mike Miller (phone)

HOUSE
JOURNAL SUPPLEMENT

March 7, 1978 Tuesday No. 17

LEGISLATIVE BOARD OF RETIREMENT BENEFITS

ANALYSES OF STATE RETIREMENT BILLS

"February 28, 1978

TO: The Honorable Hugh Malone
Speaker of the House

Pursuant to the requirements of Ch. 130, SLA 1977, the Legislative Board of Retirement Benefits submits the enclosed recommendations and analyses of bills affecting state retirement systems. The board will make further reports and recommendations periodically. The next meeting of the board is scheduled for March 6 at 9:00 a.m. in the Treasury Conference Room on the 11th floor of the State Office Building in Juneau.

Bills included in this report are: HB 7, SCS CSHB 10, CSHB 25, HB 161, HB 267, HB 634, HB 635, HB 636, HB 660, CSHB 637, HB 695, HB 698, HB 723, HB 727, SB 62, SB 91, SB 377, SB 380, SB 461.

Members:

Mr. Francis (Jerry) Gerardy
Mr. Frank Homan
Dr. Stanley Knedlik
Mr. Michael J. Murray
Dr. Merritt Olson

Frank Homan, Chairman

Frank Homan, "
J.K.H.

B. B. Allen, Commissioner
Department of Administration

Paul Arnoldt, Director
Division of Retirement & Benefits

HB 727

February 24, 1978

.egislative Board of Retirement Benefits analysis and recommendations
)n:

House Bill No. 727

No detailed fiscal analysis is possible at this time.

The board unanimously recommends that HB 727 do not pass; one member was absent.

The board feels that the long-term costs of the judicial retirement system cannot be properly assessed by the board or the taxpayers of the state until the system is placed on a funded basis similar to the PERS and the TRS. The board is unwilling to recommend increasing the liabilities of a system which is unfunded. The board questions whether the inclusion of magistrates within the judicial retirement system is consistent with the purposes for which the system was established.

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The Act takes effect July 1, 1978.

See

HB 456

amendment being drafted
~~to~~ in regard to contrib
Retirement for judges & magis.

Received

See HB 456

file - copies to members

Memorandum

Alaska Court System

TO: The Hon Terry Gardiner,Ch.
State Legislature
Judicary Committee
Pouch V,Juneau,Ak.99811

DATE : March 15,1978

FROM: Carl W.Hoinmiller,Magistrate
Drawer D,Haines,Alaska 99827
Board Member; Alaska Magistrates Assn.

SUBJECT: HB 727

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The first two classes, by order of our Presiding Superior Court Judges requires them to work a min. of 37 1/2 hrs. per week. The Class III is 20 hrs. per week and Class IV is less. HOWEVER, the parttime Magistrates all have other jobs. I underlined minimum, as all magistrates are subject to call ,25 hrs a day, seven days a week. There is no such thing as compensatory time. I know of no other State jobs that has that kind of demand, except judges. There is no overtime, either.

I can see Paul Arnholdt's"problem" , but why should Magistrate be required to be second class to judges wheh they have been declared judicial officers? If the problem exists in the court's retirement system, why defeat this bill as it will have no effect on the problem.

Should the bill come up again , I would like to be informed, however I do not want to spend $200 to listen to someone present faulty information,or at least information that can beeome misunderstood.

CC: Mike Miller
Jim Duncan
Bill Miles
Lisa Rudd
Dick Eliason
Fred Brown

file HB 727

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1978

Legislative Board of Retirement
Benefits
c/O Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Sirs:

The Committee has under consideration HB 727, which provides for inclusion of full-time magistrates under the judicial retirement systems. Testimony was given on this bill on Feb. 10. Further consideration is not foreseen before March 1.

According to the Session Laws of Alaska, 1977, it is the responsibility of the Legislative Board of Retirement to prepare a detailed fiscal analysis of legislation which would make changes in the retirement system (SLA 130, section 24.20.540).

The session laws of 1977 also give the Retirement Board the responsibility for preparation of fiscal notes of bills affecting the retirement system (SLA 130, section 24.30.037).

The Committee would like to have this information ready at the time they next consider the bill, which will be sometime after March 1.

Please do not hesitate to contact this office if you have further questions.

Sincerely,

Bob Speed

Robert Speed, Administrative Assistant

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 13, 1978

SUBJECT: HB 727 - Retirement of magistrates

TO: House Judiciary Committee
ATTN: Bob Speed, A.A.

FROM: J.L. Baldwin, Legislative Counsel

I have reviewed HB 727 as requested in your undated memorandum (copy attached) and this correspondence is to confirm our telephone coversation of February 16, 1978. The questions raised concerning this bill could be resolved by making the following changes:

(1) repeal AS 22.25.010(g); and

(2) delete section 1 of HB 729 and replace it with the following new material:

* Section 1. AS 22.25 is amended by adding a new section to read:

Sec. 22.25.100. Definitions. In the chapter, unless the context clearly indicates otherwise,

(1) "justice" means a supreme court justice; and

(2) "judge" means a superior court or district court judge or a full-time magistrate who has not retired before July 1, 1978.

You are correct in your assumption that AS 22.28 was repealed by referendum. If the Committee directs, I will prepare a committee substitute for their review.

JLB:hjd

Attachment

Alaska State Legislature

Baldwin

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Bill Berrier

FROM: House Judiciary,
Bob Speed, A.A.

RE: HB 727, including magistrates in the judicial retirement system.

We need information on the impact of the changes this bill would make in regard to two statutes:
AS 22.25.020 and
AS 22.28.060, the latter of which we hear may have been repealed last year.

What would the impact be? And, would a change imposed by HB 727 or a similar bill necessitate changes in the statutes cited?

#

Send memo
Telcon 2-16-78

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 727

The board submits the attached fiscal note as an update of its previous comments on the fiscal impact of HB 727.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 727
Title Inclusion of Full-Time Magistrates Under the Judicial Retirement System
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Administration - Division of Retirement & Benefits
Program Category Affected Retirement and Benefits
Budget Request Unit(s) Affected Non-Contributory Judicial/Full-Time Magistrate

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
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100	BENEFITS		279.6	293.6	308.3	323.7	339.9
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GENERAL FUND		279.6	293.6	308.3	323.7	339.9
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Fiscal note represents cost on a funded basis for the inclusion of past and future service for existing full-time magistrates under Non-Contributory Judicial Retirement System (AS 22.25).
2. Fiscal note does not include the cost on a funded basis for the existing Judicial System (AS 22.25) (these costs identified in fiscal note for SB 91--first year cost equals $1,832.7).
3. The Alaska Court System cannot provide a definition for "full-time" magistrate (see attachment), so for purposes of this fiscal note all magistrates earning $15,000 or more per year were considered full-time (16 out of 50) with an average salary of $24,939.
4. Assume salaries for full-time magistrates increase at 5% per year.
5. Employer contribution rate of 70.08% of covered payroll is required.

FY 79 covered payroll for full-time magistrate	$399,020
Employer contribution rate	.7008
FY 79 employer cost for full-time magistrates	$279,633

IV. DATE 3/01/78 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement & Benefits
PHONE 465-4460

Paul B. Arnoldt

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Schaeffer
Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

Gardiner

this page

HB 727

February 24, 1978

egislative Board of Retirement Benefits analysis and recommendations
n:

House Bill No. 727

No detailed fiscal analysis is possible at this time.

The board unanimously recommends that HB 727 do not pass; one member was absent.

The board feels that the long-term costs of the judicial retirement system cannot be properly assessed by the board or the taxpayers of the state until the system is placed on a funded basis similar to the PERS and the TRS. The board is unwilling to recommend increasing the liabilities of a system which is unfunded. The board questions whether the inclusion of magistrates within the judicial retirement system is consistent with the purposes for which the system was established.

SUMMARY OF HOUSE BILL NO. 727

Retirement system affected: PERS

Amends the noncontributory judicial retirement system by adding coverage for full-time magistrates, removes full-time magistrates retiring after July 1, 1978 from the public employees' retirement system, and refunds all employee contributions to PERS of affected full-time magistrates, and restores employer contributions to the general fund.

The Act takes effect July 1, 1978.

file HB 727

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1978

Legislative Board of Retirement
Benefits
c/O Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

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The Committee would like to have this information ready at the time they next consider the bill, which will be sometime after March 1.

Please do not hesitate to contact this office if you have further questions.

Sincerely,

Bob Speed

Robert Speed, Administrative Assistant

Alaska Court System
State of Alaska

SUSAN BURKE
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-8611

February 24, 1978

Hon. Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 727

Dear Representative Gardiner:

This is in response to your Committee's request for (1) a description of our existing system for distinguishing between full time and part time magistrates for purposes of leave benefits, and (2) a definition of "full time" magistrates for purposes of retirement benefits under House Bill 727.

During 1975, our personnel office conducted a survey of all magistrate posts in order to develop a standard schedule of salaries for magistrates. This survey included on-site visits to most of the magistrate posts. As a result of this undertaking, baseline 1975 data was developed which included, among other things, the number of hours each magistrate was required to spend in his or her office. Those who were required to keep regular office hours of 8:00 to 4:30 were considered "full time" for purposes of applying leave benefits under AS 39.20. (It should perhaps be noted that the number of hours worked was not ultimately used as one of the criteria for salary setting.)

Having established baseline data, we now merely update it to reflect any changes in circumstances that would have a bearing on salary level. Through this process we can also determine whether the workload has increased or decreased to the point that a change is warranted in the application of leave benefits.

After having some time to reflect on your request for a definition of "full time magistrate" that might be used in House Bill 727, we find that it is impossible to do so. As you know, we consider all magistrates as full time for purposes of retirement benefits. Unless all magistrates are to be included in House Bill 727, then a definition of "full time magistrate" necessarily involves including some magistrates and excluding others. The basis for making this distinction involves a policy determination that we believe only the Legislature can make. The judiciary has already made a policy determination that all magistrates should be treated equally for retirement purposes, and has expressed the view that no magistrates should be included in the existing judicial retirement system.

I realize that this response does not provide much assistance toward developing an accurate fiscal analysis of the bill, but I hope you understand the inherent limitations we face. If tere is any other information we can provide, please let me know.

Sincerely,

Susan Burke

Susan Burke
Staff Counsel

Box 271 Haines,
Alaska 99827

Feb.28,1978

The Hon.Terry Gardiner,Ch.
Judiciary Committee of the House
Pouch V
Juneau,Alaska 99811

Dear Terry:

As some members of the "legal society" do not agree with HB 727,in that Magistrates are not to be classified as Judges, i.e. District Judges, I am enclosing an excerpt from a recent ruling by Judge Rowland of the Superior Court in Anchorage. Of course, the plaintiff might appeal this judgment to the Supreme Court who could reverse Judge Rowland's opinion.

The Magistrate's Association had understood that the the Court administration would neither support our request or opposed it as far as what HB 727 is intended to do, however, they have not remained silent, as you know.

Please advise as to the status of HB 727. If there is to be further hearings, we would be glad to attend and testify. It is vital that this bill be passed by this Legislature.

Sincerely,

Carl W.Heinmiller
Haines Magistrate

CC:Malone
Schaeffer
Miller
Duncan
Miles
Eliason
Magistrates.

controlling. That section provides as follows:

> Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law. [Emphasis added.]

The defendants have not argued, and it cannot be maintained, that magistrates are not judges and, therefore, are excluded from the purview of Article IV, Section 4. The functions

and responsibilities of magistrates are judicial in character. Their duties are in large measure coextensive with, and in no respect different than, those of district court judges. AS 22.15.100; AS 22.15.110; AS 22.15.120. Magistrates are statutorily defined along with justices of the supreme court and other judges as "judicial officers." AS 22.20.010. Magistrates are granted the same judicial powers and prerogatives necessary to carry out their judicial responsibilities as all other judicial officers. AS 22.20.030.

The aforementioned constitutional mandate, requiring a term for a judge of any court, is consistent with the idea, universal in American jurisprudence, that an independent judiciary is not only desirable, but indispensible. This notion of judicial independence extends, not only to freedom from executive and legislative interference with the decision-making process, but to all unwarranted pressure. Our concepts of justice and due process of law require that a judge, when [illegible] of a particular cause or considering

Rt. 6, Box 4136
Juneau, Alaska
February 28, 1978

Robert Speed, Administrative Assistant
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska

Dear Mr. Speed:

In answer to your inquiry, HB 727 does not appear to conflict with the Salary Commission, since the compensation and benefits for magistrates are not under our review.

You also ask "if we change the law, will that bring magistrates under state retirement system?" Your question indicates it may not be clear to you that the state retirement system and the judicial retirement system are 2 different systems. Magistrates are now members of the state retirement system, PERS (a contributory system). The judicial retirement system, as it applies to judges, is non-contributory with better benefits than PERS. HB 727 would move them to this better system.

There has been some movement in the past to alter the non-contributory part of the judicial retirement system, and this may surface again in the future. Because of the constitutional provision against reducing compensation for judges, it is our understanding that the judicial retirement system cannot be made contributory unless accompanied by a raise of an amount at least equal to the first contribution, or some similar arrangement. I assume magistrates are not covered by the constitutional prohibition. Would that create any special problems if the judicial retirement system were to become contributory?

Thank you for asking the opinion of the Salary Commission on HB 727 and your offer to inform me when you will next be considering it.

Sincerely,

Kathleen W. Diebels, Chairman
Alaska State Salary Commission

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

SUSAN BURKE
DEPUTY ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-8611

February 24, 1978

Hon. Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 727

Dear Representative Gardiner:

This is in response to your Committee's request for (1) a description of our existing system for distinguishing between full time and part time magistrates for purposes of leave benefits, and (2) a definition of "full time" magistrates for purposes of retirement benefits under House Bill 727.

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I realize that this response does not provide much assistance toward developing an accurate fiscal analysis of the bill, but I hope you understand the inherent limitations we face. If tere is any other information we can provide, please let me know.

Sincerely,

Susan Burke

Susan Burke
Staff Counsel

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 727

The board submits the attached fiscal note as an update of its previous comments on the fiscal impact of HB 727.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 727
Title Inclusion of Full-Time Magistrates Under the Judicial Retirement System
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Administration - Division of Retirement & Benefits
Program Category Affected Retirement and Benefits
Budget Request Unit(s) Affected Non-Contributory Judicial/Full-Time Magistrate

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
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OTHER (Specify)						

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III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Fiscal note represents cost on a funded basis for the inclusion of past and future service for existing full-time magistrates under Non-Contributory Judicial Retirement System (AS 22.25).
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FY 79 covered payroll for full-time magistrate	$399,020
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IV. DATE 3/01/78 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement & Benefits
PHONE 465-4460

Paul B. Arnoldt

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Schaeffer
Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM March 13, 1978

SUBJECT: HB 727 - Retirement of magistrates

TO: House Judiciary Committee
ATTN: Bob Speed, A.A.

FROM: J.L. Baldwin, Legislative Counsel

I have reviewed HB 727 as requested in your undated memorandum (copy attached) and this correspondence is to confirm our telephone coversation of February 16, 1978. The questions raised concerning this bill could be resolved by making the following changes:

(1) repeal AS 22.25.010(g); and

(2) delete section 1 of HB 729 and replace it with the following new material:

* Section 1. AS 22.25 is amended by adding a new section to read:

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You are correct in your assumption that AS 22.28 was repealed by referendum. If the Committee directs, I will prepare a committee substitute for their review.

JLB:hjd

Attachment

Box 271 Haines,
Alaska 99827

Feb.28,1978

The Hon.Terry Gardiner,Ch.
Judiciary Committee of the House
Pouch V
Juneau,Alaska 99811

Dear Terry:

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CC:Malone
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Rt. 6, Box 4136
Juneau, Alaska
February 23, 1978

Robert Speed, Administrative Assistant
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska

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Alaska Court System
State of Alaska

SUSAN BURKE
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-8611

February 24, 1978

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Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 727

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Susan Burke

Susan Burke
Staff Counsel

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 727

The board submits the attached fiscal note as an update of its previous comments on the fiscal impact of HB 727.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 727
Title Inclusion of Full-Time Magistrates Under the Judicial Retirement System
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Administration - Division of Retirement & Benefits
Program Category Affected Retirement and Benefits
Budget Request Unit(s) Affected Non-Contributory Judicial/Full Time Magistrate

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FY 79 employer cost for full-time magistrates	$279,633

IV. DATE 3/01/78 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement & Benefits
PHONE 465-4460

Paul B. Arnoldt

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Schaeffer
Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

HB
753

March 21, 1978

Representative Kris Lethin
Pouch V
Juneau, Alaska 99811

RE: H.753

Dear Mr. Lethin,

Yesterday I received a copy of H.753 from Mrs. Walter Bhagatram. We are so pleased that you and your co-sponsors are working on this problem of Birth Certificates for foreign-born children.

I am, however, confused by the wording of the amendment. It is so very important that your efforts not only successfully pass into law, but also, most importantly, that the resulting law will generate birth certificates from Vital Statistics in Alaska.

I asked the opinion of our lawyer, who, after reading H.753 and the Alaskan statutes , felt that as worded, H.753 might not generate birth certificates for foreign-born children. I'm sure you can appreciate how this made us feel. On the one hand we do not wish to be critical or disparaging of your concern and willing efforts. On the other hand we do not want your efforts to be for nothing as we most strongly desire birth certificates for our children.

Is there, then, any assurance you can give us that this bill will, if passed, result in actual birth certificates?

Again, we do thank you for your help and continued concern and hope to hear from you soon.

Sincerely,

Mary K. Storm

Mary K. Storm (Mrs. Allen B. Storm)
4274 Dean Drive
Ventura, Ca. 93003

POSITION PAPER/Department of Health and Social Services

HOUSE BILL 753

"An Act relating to birth registration of foreign born children."

It is the opinion of the Department of Health and Social Services that the need addressed in this bill is already satisfied. In 1960 the U.S. State Department recognized that aliens in this country needed an acceptable document as proof of date of birth. Since that time the birth record issued by the U.S. Immigration and Naturalization Service has been totally accepted by all jurisdictions. Should the alien become naturalized, further documentation is provided. A birth record established by the State of Alaska for an adopted alien would be a duplication of effort and violate the basic principle of registration which is to record vital events where they occur.

Recommended by: D. Sharon Osborne — 2/23/78
D. Sharon Osborne, Coordinator — Date

Approved by: Helen D. Beirne — 2/23/78
Helen D. Beirne, Commissioner — Date
Department of Health & Social Services

Joan Brooks

HB

784

Alaska Court System
State of Alaska

SUSAN BURKE
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-8611

February 21, 1978

Honorable Sally Smith
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 784 -- Jurisdiction of Magistrates

Dear Sally:

This is in response to your request for back-up material in support of HB 784.

Under AS 28.35.230, all violations of state traffic regulations are classified as infractions, and thus carry a maximum penalty of a $300 fine. Because the maximum fine is relatively low and because the possible penalty does not include incarceration, there is no right to trial by jury and no right to appointed counsel at government expense. Thus, we believe that traffic infractions are particularly appropriate to include within magistrate jurisdiction.

This is especially true in light of the anomalous situation that now exists with respect to magistrate jurisdiction over misdemeanors. As you know, magistrates may now hear and try any misdemeanor filed by a municipality for violation of its ordinances. A magistrate may not, however, hold a trial for an offense charged under state law or regulation (including traffic infractions) unless the defendant consents in writing to be tried by the magistrate. A number of municipal ordinances around the state carry possible penalties that are much more severe than the maximum allowed for state traffic infractions. There seems no reason to allow magistrates full jurisdiction over the more serious municipal cases and restrict their jurisdiction over state traffic infractions.

Our Technical Operations office is in the process of compiling the statewide traffic statistics for 1977. We anticipate that these statistics will show that a high proportion of traffic cases were state infractions. It would provide the judiciary with additional flexibility if these traffic infractions could be heard by magistrates without written consent by the defendants. We will forward these statistics to you as soon as they are available, which should be within about a week.

Please let me know if you would like any additional information.

Sincerely,

Susan

Susan Burke
Staff Counsel

SB/bjs

HB
803

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 16, 1978

SUBJECT: HB 803: Constitutionality of amendments to "Administrative Rules"

TO: Representative Terry Gardiner
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

HB 803 establishes an alternate procedure for adjudication of challenges to administrative regulations. Among its provisions is section 302(e) which establishes a filing fee which is a variation of the filing fees established under the authority of the supreme court under Administrative Rule 11. The latter rule states that the filing fee for the initiation of litigation is established under Supreme Court Order No. 59.

Your question is whether it is constitutional for the legislature to amend administrative rules.

The genesis of your request is presumably Art. IV, Sec. 15 of the state constitution, which provides:

> The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

The question whether the legislature could amend "rules governing the administration of all courts" is one that has interested lawyers, observers of the legislative scene, and, perhaps, the judiciary. For all this interest, however, the question has received little, if any, direct attention from the supreme court in published opinions, primarily, I suppose, because none of the cases to reach the court involved matters

described either by counsel or the court itself as involving "administration."

Thus, the several leading cases all are said to involve matters of substance or of practice and procedure:

(1) Leege v. Martin, 379 P.2d 447 (1963), involved the legislature's effort to eliminate suspension of a court decision to revoke a fishing license; the court had a general rule allowing suspension of lower court judgments on appeal. The matter was treated as involving only a matter of practice or procedure. [The case is of primary interest because of its judicial embellishment on Art. IV, Sec. 15 that even if the legislature passes a bill which is later viewed as intruding on a court rule of practice or procedure by a two-thirds vote, thereby complying with Art. IV, Sec. 15, it will not be deemed by the court to have amended the court rule unless it does so explicitly and by specific reference to the court rule; and the court rule will prevail.]

(2) Channel Flying v. Bernhardt, 451 P.2d 570 (1969), involved the question whether a judicial disqualification statute constituted an amendment to a rule governing practice and procedure; if it did, it was invalid because its adoption was not affirmatively done as an amendment to the rules of practice and procedure as required under the Leege case. The court discussed Art. IV, Sec. 15 but concluded that the statute involved a matter of substance undoubtedly within the legislative prerogative.

(3) City of Valdez v. Valdez Development Company, 506 P.2d 1279 (1973), concerned a statute postponing automatically cases in which legislators are attorneys, primary witnesses, or otherwise significantly involved. While the court said: "...it is readily apparent the mandatory continuance provision can have grave consequences on the administration of the judicial system...," it is also true that the court considered the statute as a statute dealing with practice and procedure not adopted under the Leege procedures and therefore defective. No suggestion was offered that as a possible infringement on the administration of courts the subject was beyond legislative amendment.

(4) Silverton v. Marler, 389 P.2d 3 (1964), and Thomas v. State, 566 P.2d 630 (1977) both are concerned with the separation between substance and procedure, not between procedure and administration and offer no guidance.

A study done for the Legislative Council on July 1, 1960 is perhaps the best statement of the problem. It notes that the formulation of Article IV, Sec. 15 just prior to its revision into its present language was this way:

> The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts, which rules may be changed by the legislature by two-thirds vote of members elected to each house.

The report also notes that the revision to the present language was done by the committee on style and drafting; the report notes that

> "The committee had no authority to make substantive changes without the approval of the full convention."1/

The report concludes that "rules governing the administration of all courts cannot be changed by the legislature..."

Almost eighteen years later, I would agree only that the authority of the legislature over "rules of administration" is somewhat less clear than its authority over "rules of practice and procedure." Since the supreme court has never interpreted a rule it characterized as a rule of administration [nor has it interpreted a statute which it viewed as impinging on a rule of administration], the interpretations offered in the 1960 opinion are still untested.

1/ While the authority of the committee on style and drafting is as stated, the statement begs the question whether a change was in fact made.

Part of this problem is initially semantic, and only thereafter legal.

The supreme court has adopted codes of rules in eleven areas; one code is specifically characterized as "Administrative Rules" and three others are derived from the so-called "inherent" authority of the court over the practice of law. Sullivan v. Alaska Bar Association, 551 P.2d 531 (Alaska 1976). These rules would include the Alaska Bar Rules, the Code of Judicial Conduct, and the Code of Professional Responsibility.

Accordingly, it appears that the supreme court may have "made and promulgated" seven sets of rules under its authority to adopt rules of practice and procedure. [Criminal, Appellate, District Court Criminal, District Court Civil, Civil, Childrens, and Probate Rules]

The difficulty for lawyers, litigants, and the legislature is that what is clear is that the characterization of rules by their title or grouping does not necessarily resolve their status under the constitution.

The Valdez case, supra, contains no allusion to the challenged statute's status as a possible amendment to a rule of administration. In fact, of course, the court has located its rules on calendaring and continuances in the Civil Rules. Alaska Civil Rule 40(f).

Yet the scheduling of cases is among the areas viewed by the 1960 Legislative Council memorandum as within the term "rules governing the administration of courts." The phrase was said by the memorandum to comprehend not only the traditional areas of the court's inherent powers but also the areas necessary to manage a unified judicial system:

> What these grants [constitutional grants to a court system of power over "administration"] represent, apparently, is constitutional recognition of the modern unified court system. They comprehend a power over matters which are not "procedural" in the sense that the latter treat of the procedures involved in bringing a particular case to adjudication, but which are concerned rather with the internal organization of large and

complex systems of courts. Levin and Amsterdam, Legislative Control over Judicial Rule Making: A Problem in Constitutional Revision, 107 U. Pa. L. Rev. 1, 33 - 34 (1958).

In New Jersey, under a very similar provision, rules have been adopted providing for the sittings of court, the assignment of judges, general matters regarding the dispatch of judicial business, calendars, publication of opinions and similar issues. 2/ The 1960 memorandum noted that by that time, the Alaska Supreme Court had promulgated "rules governing administration" including the duties of the administrative director, the designation of holidays, the sittings of the court, the provision for court facilities, the duties of clerks and so forth.

Roscoe Pound, in his commentary on the Winberry case at 66 Harvard Law Review 28, (38 - 39), comments that courts have not been reluctant, even historically in the absence of a constitutional provision similar to Art. IV, Sec. 15, to declare legislative intrusions on the independence of the judiciary to be invalid:

> Houston v. Williams, 13 Cal. 24, 25 (1859) (Justices of California Supreme Court must deliver their opinions in writing.)
>
> Vaughn v. Harp, 49 Ark. 160, 162, 4 S.W. 751, 752 (1887) (Justice of Arkansas Supreme Court must deliver opinions in writing and address all issues raised by counsel.)
>
> Ex parte Griffiths, 118 Ind. 83, 20 N.E. 513 (1889) (Court must write and file headnotes to its opinions.)
>
> Speight v. People, 87 Ill. 595 (1877) (The opinion of each judge is to be stated on each issue submitted.)
>
> In re Janitor of the Supreme Court, 35 Wis. 410 (1874) (As the court had the inherent power to appoint and remove its janitor, it could appoint and remove his assistants.)

2/ See Winberry v. Salisbury, 5 N.J. 240, 74 A.2d 406 (1950); see also, discussing Winberry, 65 Harvard L. Rev. 234, 66 Harv. L. Rev. 28.

The 1960 memorandum notes that not all that is contained in Rules for Administration might be adopted under that power:

> "This [the mandate to adopt rules governing administration] would include much of the material found in the rules promulgated by the Alaska Supreme Court entitled 'Rules Governing the Administration of all Courts,'..." [Emphasis added]

The final question then is whether legislation setting filing fees is a rule of administration or not. 3/

As you know, the supreme court has exercised the responsibility to set filing fees since statehood. However, the long unchallenged exercise of a power does not necessarily validate it, if the underlying premise is absent. Bradner v. Hammond, 553 P.2d 1 (1976).

The fees that are set as a condition for filing cases are in economic terms not analagous to a charge for the privilege of filing a case measured by the cost to the state of processing the case; the filing fees would need to be measurably higher than their present levels. The legislature, as the basic determiner of tax policy under the constitution, Article IX, may, however, reserve to itself the right to vary the charges made in order to resolve public policy questions of interest to it, even if it has never found fault with the court's own filing fees.

While my research has turned up no case that characterizes filing fees either as a part of rules of administration, rules of practice and procedure, or as substantive law undoubtedly committed to the legislature, the setting of fees for entry into the judicial process is not analagous to any of the cases described as involving the inherent powers of courts. While I believe this conclusion to be supportable in law, the committee must note that the final arbiter on this point will be the supreme court.

3/ As noted earlier, the locus of the rule does not determine its status under the constitutional rule-making authority given to the supreme court.

The Alaska Administrative Rules typically deal with topics concerned with the internal management of court affairs, for example Rule 2 prohibits the practice of law by judicial personnel; Rule 4 deals with judicial conferences; Rule 18 deals with terms of the supreme court; Rule 24 with the sittings of courts, and so forth.

These rules may fairly be characterized as rules of administration and it is unnecessary to suggest, at this time, what the legislature's role as to their revision might be. 4/

In my opinion, it is clear that the court's allocation of the rules to the various collections of rules represents a judgment by it not only of the implications of Art. IV, Sec. 15 but also an allocation of a rule which could be a matter of substance, where the legislature has acquiesced in the court's implementation of that power. In other words, the rules were developed entirely subsequent to the adoption by the legislature of Ch. 50, SLA 1959. The court itself was not appointed until several months after Ch. 50 took effect. In that context, the court, recognizing the necessity for filing fees, may be viewed as either (1) filling a gap under Ch. 50 or (2) exercising a constitutional power under some part of Art. IV, Sec. 15.

At this time, I conclude that the location of a rule in the "administrative rules" adopted by the supreme court is not a necessary determination as to the status of the rule under Article IV, Section 15.

4/ The 1960 memorandum to the Legislative Council represents a carefully considered analysis of this question. For its time, considering that the supreme court had only recently opened its doors for business, the 1960 memorandum represents the then state of the law. Any subsequent analysis, however, must consider not only the language of Art. IV, Sec. 15 and its history, but, also the judicial evolution of the section in the context of the practice and procedure/administration dichotomy.

Having said that, I then conclude that the establishment of fees for the filing of cases is not a matter involving the administration of courts but rather a matter of substance, or at the least, a matter of practice and procedure amendable by the legislature. Accordingly, the substance of §302(e) in HB 803 does not violate the provisions of Article IV, Section 15 of the Alaska Constitution.

RAB:jpd

HB
909

ADMIN PAPER/Department of Health and Social Service

POSITION PAPER
HOUSE BILL #909

"An Act making special appropriations to the Alaska Court System; the Office of the Governor, public defender's office; and the Department of Administration and Law; and providing for an effective date."

The passage of this bill will have a definite and significant impact on the operating and capital budgets of the Division of Corrections as follows:

The only available data to estimate the impact on the Department of Health and Social Services, Division of Corrections, originates with the Court System projections of April 197_. According to their reports, the flow rate of the Anchorage area offenders into and through the justice system will increase by a factor of 1.411 as the result of an augmented Anchorage police force.

In an earlier study by the Division of Corrections and supported by private consultants' reports, the admissions for the Anchorage Annex plus Ridgeview Correctional Center are estimated for FY'79 at 8242 and FY'80 at 8984 excluding "peaking" effects.

The table below reflects the incremental affects on those earlier projections which result from the augmentation anticipated by the Court System.

	1 Projections Before Augmentation		2 Projections With Augmentation		3 Differentials Col. 2 less Col. 1	
	1979	1980	1979	1980	1979	1980
Admissions	8,242	8,984	11,629	13,152	3,387	4,168
Man Days	49,452	53,904	69,774	78,781	20,322	24,877
Average Head Count	135	148	191	215	56	67
Man Day Cost	$ 50	$ 55	$ 50	$ 55	-	-
Operating Cost	$2,472,600	$2,964,720	$3,488,700	$4,332,955	$1,016,100	$1,368,235

The need for additional bedspace in FY'79 to handle this augmented police effort, based on the above, represents a capital outlay estimated at 56 x $90,000/bed = $5,040,000 without consideration for expansion capability. This bedspace is in addition to those facility requirements contained in the Governor's FY 79 bond package for justice facilities. The Department of Transportation - Public Facilities study by Gruzen & Partners - Consultants, was made prior and did not consider the augmentation of the Anchorage police force. During the past nine months, the period subsequent to the study data, the Division of Corrections has consistently experienced inmate populations above the study projections.

The earliest date for a facility of this size to be on line considering general funding would be July, 1980. Meanwhile, the overcrowding of existing facilities would be compounded, necessitating significant additions to the correctional staff.

The Division of Corrections will request supplemental appropriations to the FY 79 budget when and as actual needs are identified. It is believed that the Division could be critically impacted about January, 1979. It is reasonable to expect that from January 1, 1979 to June 30, 1979 at least 15 additional correctional officers will be needed and a minimum of $500,000 expended for care and custody costs of the additional man days of confinement involved.

The Probation and Parole services will also be affected. Using January 1, 1979 as the critical point of need, the FY 79 additional personnel and related costs are as follows:

1 - P.O. II - Investigations	$ 32,000
1 - P.O. II - Presentence Work	32,000
3 - P.C. II - Community Supervision	96,000
1 - Clerk Typist III - Clerical Support	19,100
Annual Total	$179,100
Other Annual Support Costs for the above are estimated at:	46,000
	$225,100
Less: One-Half year amount	112,550
Total	$112,550

Recommended by: _____ 4/24/78
William H. Huston
Director
Division of Corrections

Approved by: _____ 4/24/78
Helen D. Beirne, Commissioner
Department of Health and
Social Services

PUSH RUN PAPER/Department of Health and Social Service

Introduced: 3/27/78
Referred: Judiciary and Finance

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 909

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making special appropriations to the Alaska Court System; the Office of the Governor, public defender's office; and the Departments of Administration and Law; and providing for an effective date."

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

* Section 1. The sum of ~~$720,000~~ 70,000 is appropriated from the general fund to the Alaska Court System to meet expenses of additional personnel ~~and related costs~~ for the trial courts at Anchorage.

* Sec. 2. The sum of ~~$274,000~~ 32,000 is appropriated from the general fund to the public defender's office in the Office of the Governor to meet expenses of additional personnel, ~~increased office space, and related costs~~ for the public defender's office in Anchorage.

* Sec. 3. The sum of $107,000 is appropriated from the general fund to the Department of Administration to meet expenses of additional personnel and relocation of the office of the state recorder in Anchorage.

* Sec. 4. The sum of ~~$169,000~~ 32,000 is appropriated from the general fund to the Department of Law to meet expenses of additional personnel ~~and related costs for the~~ office of the district attorney, Third Judicial District, at Anchorage.

* Sec. 5. This Act takes effect July 1, 1978.

* Sec 3 32,000 Dept of HSS
Division of Corrections

12-L2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER / POUCH N - JUNEAU 99811

April 20, 1978

The Honorable Terry Gardiner
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

Noting the increases in the budgets of the Alaska Court System, Public Defenders Office, Department of Administration and the Department of Law contained in House Bill 909, I would like to call to your attention the recent cuts made to the two Alaska State Trooper BRUs which are assigned the responsibility of serving the increased activity of the Court System which will parallel this increase in their budget. The budget originally submitted by the Governor to the Legislature anticipated this increase in activity, as well as numerous other statewide law enforcement problems.

The House budget, however, deleted from the Judicial Services' BRU one new Trooper, as well as two existing Troopers. In the Detachments and CIB BRU, the House reduction included fourteen new Troopers plus one existing Trooper. Had these budget reductions not been imposed, I would have felt comfortable proceeding into FY 1979 without inclusion of our Department in the special provisions of House Bill 909. It was reported to us that the reduction of three commissioned positions was the result of their vacancy for a major portion of FY 1978. It should be apparent that it is virtually impossible to maintain a 100% occupancy of positions available particularly in a unit such as the State Troopers which require three months of Academy training and where hiring only occurs twice a year. Since there is no point in time when we can legally hire more positions than authorized, there will continue to be isolated vacancies in the future which if viewed similarly would result in budget cuts in every succeeding year. If the same logic had been applied during pipeline construction when a substantial number of Troopers terminated, we would have lost many more than two positions.

As to the specific problem of dealing with prisoner transportation, as a result of the increased number of enforcement officers in the Anchorage area, I feel that a minimum of three Troopers should be added to the Judicial Services' unit. That would be restoration of the two cut plus

the one new one requested. However, the problem we are facing in serving the Court System and the Division of Corrections is more extensive than just the increase which will occur in the Anchorage area.

In the past two years, inmate population has grown by almost 200 prisoners in Alaska's correctional facilities. This has resulted in serious overcrowding and no relief of this situation is anticipated during FY 1979. As the overcrowding increases, the demand for prisoner transportation between institutions to balance population by moving prisoners to where beds are available has and will continue to increase. Another serious factor which is basically outside of my control and has affected our efficiency very adversely is the recent labor contract negotiated with Public Safety Employees Association. This contract does not allow us to have officers move prisoners voluntarily on their day off at their request as has been the past practice. This reduction in total available man hours must either be met by more overtime or more positions. Obviously at time and one-half for overtime, creation of new positions is preferable.

Up to this point, I don't feel that the Department of Public Safety has been responsible for any logjamming in the administration of justice system, however, that time is rapidly approaching. Another factor which the budget reductions probably did not recognize was the impact in the Fairbanks "I" Detachment area of gasline pre-construction activities. Simply stated, with a cut of $96.2 in the Judicial Services' BRU and $641.8 in the Detachments and CIB BRU, the level of law enforcement services provided by the Alaska State Troopers during FY 1979 will deteriorate substantially if no increase is received either through House Bill 909 or the Free Conference Committee budget.

I have attached several excerpted pages from the Quarterly Field Program Reports for the quarter ending March 31, 1978. These reports are prepared in the field and sent directly to my office to keep me abreast of the various types of manpower, equipment, logistics and operational problems being faced by field personnel. From these, you will note that in Anchorage, senior officers responsible for administering the Judicial Service function statewide are themselves escorting prisoners, acting as court bailiffs and performing other related duties which should normally be accomplished by their subordinates if adequate in numbers. In Juneau, Ketchikan, Bethel and several other locations around the State, we had to terminate the temporary help which in the past has been assigned to assist the Troopers in carrying out the Judicial Service function. There is no provision for temporary State Troopers, and we are not recommending it both because of the liability exposure to the State and the inefficiency of training personnel only to be forced to terminate them after nine months employment. We prefer to have permanent, fully trained and qualified personnel in numbers adequate to meet the responsibility assigned. This past practice of utilizing temporary Judicial Service Officers has been appropriately discontinued.

In general, from the material attached, you can see that it is an everyday occurrence around the State that officers assigned to local patrol are diverted to the service of the Courts and prisoner transportation problems under the Judicial Services' unit. The final page of the attachments was contained in the Fairbanks Quarterly Reports and shows that in the three month period ending March 12, 1978, we were basically falling behind in our workload every month in Fairbanks.

Although I do not want to be the harbinger of gloom, this is and should be an area of concern demanding the specific attention of your Judiciary Committee.

Very truly yours,

Richard L. Burton
Commissioner

Enclosures

cc: Senator George Hohman, Chairman, Senate Judiciary Committee
Michael C. Harper, Administrative Assistant to the Governor

of ALASKA

MEMORANDUM

TO: Commissioner Richard L. Burton
Department of Public Safety

DATE: April 12, 1978

FILE NO:

TELEPHONE NO:

FROM: Captain A. A. English
Commander/Civil Section
Alaska State Troopers

SUBJECT: FIELD PROGRAM REPORT
FIRST QUARTER 1978
ANCHORAGE CIVIL SECTION

1. Events adversely effecting local operations:

Classification of prisoners is still a time consuming function of J.S. personnel. We no longer participate in Eagle River and Annex Classifications as all of their classifications are "in house". A J.S. supervisor still spends an average of two hours per week at Ridgeview (female facility) and five hours per week at Third Avenue jail participating in Corrections Classifications. The reason for no longer classifying at Eagle River and the Annex is that Eagle River accepts only sentenced classified prisoners and the Annex ships all its prisoners to Third Avenue as soon as they are sentenced.

The volume of transportation of prisoners between Alaskan cities remains high. A great many of these moves are for psychiatric examinations at API or Langdon Clinic. Prisoners are brought up from Juneau or down from Nome for such psych. exams. and are often ready for return to their place of arrest within two days. As an example of high expense: The Ketchikan Superior Court recently ordered a juvenile murder defendant transported to Fairbanks for a partial day psych. exam., which required us to provide escorts and the fare.

(continued)

With the new PSEA contract we have had to re-evaluate our P.T. policy. Past policy was to utilize troopers on their days off at their request. In such cases we paid only minimum per diem and round trip airfare. The troopers donated their time so they could visit their destination for personal reasons. With the new PSEA contract such voluntary travel will have to be with the approval of the troopers Detachment Commander authorizing the overtime.

2. Significant Changes

I am presnetly conducting a study of statewide J.S. functions being done in the Anchorage J.S. Office. The possibility of moving some of the responsibility to the Director's Office is the reason for this study.

Anchorage courts are often in session from 8:00 a.m. until 6:00 p.m. these busy days, especially with jury trials. This makes it necessary for us to have troopers available for the purpose of prisoner control.

3. Prevention development progress:

The plan mentioned in the January 3, 1978 report of APD warrant section moving out of the court building has been altered and City warrants instead moved to AST-J.S.'s former office area in the old court building. It is hoped that the holding cells in that area will someday also be utilized for City prisoners, thus cutting down the volume of prisoner traffic in AST-J.S. Prisoner Transportation Holding area. We will continue to assist the court with all remands whether State or City.

(continued)

4. Operations:

Manpower continues to be a problem. To keep up with the court prisoner duties alone J.S. supervisors (Capt., Lt., 1st Sgt., and Cpl.) find themselves in court several hours weekly. Our writ load has been down this quarter but if the usual increase of summer materializes in both prisoners and writ volume we will not be able to keep up without an increase in overtime.

Personnel Actions include the following:

1) Trooper Bob Adams will be off duty until approximately June 1 following heart surgery.
2) Temp. JSO/Dispatcher Len Bunts was promoted to Trooper 4-10-78 and assigned to Vehicle Enforcement.
3) Effective 4-1-78 Trooper Rod Pilch was permanently assigned to Anchorage J.S. following a three month TDY assignment from "C" Detachment.
4) Effective 4-10-78 Trooper Atkinson was returned to "C" Detachment following three months TDY training at J.S.
5) Effective 4-16-78 Trooper Coffey will be transferred to Talkeetna Post.
6) Trooper Reed has been frequently utilized by CIB and Intelligence for polygraph examinations.
7) Pilot/Officer McMillon is utilized heavily for pilot duties by the various Departmental sections during the summer months.

The result of the manpower shortage is having to schedule heavily on day shift to cover court (8:00 a.m. - 6:00 p.m.) and to have a skeleton crew on swings and weekends (the best writ serving

(continued)

times). Warrant section troopers are heavily used in court and for prisoner transports giving each man only a few hours a week to work straight warrants. Manpower utilization is being re-evaluated with the thought in mind of the possibility of reassigning responsibilities.

5. Training

It is still not fully decided what additional training the reclassified troopers (from JSOs) will be receiving or what "grandfather" rights may be granted them. The decision is expected from the Commissioner's Office in April of 1978.

6. Support

It would seem that any office walls or carpet for the squad room is out of the question. The Court System will not fund the requested charges and we do not have the funds.

7. Logistics

Four vehicles of our total eighteen remain without screens (silent patrolman) but all four will be replaced over the next year. Two are 1974 Novas and two are 1975 Chevelles.

Sirens and shotguns have been ordered for all J.S. vehicles not so equiped.

8. Facilities

Two needs, whenever money is available, within the Court System or Public Safety budget are:

1) SEPERATE men's and women's rest rooms in the squad room. Right now our male and female troopers and office staff use a system

(continued)

of changing signs on the rest room door, i.e.,; Male/Female and Occupied/Not Occupied. Presently twenty-four personnel (five females) utilize this rest room.

2) A drive-in secure prisoner loading/unloading area is needed at the Court bulding. Presently we often have to walk prisoners across the parking lot over ice exposing the troopers and prisoners to attact or accidential injury besides the escape risk factor.

9) A new antenna for our J.S. radio frequency on top of the Court building is still in the plans for this summer.

The private line has been moved from the upstairs, Captain's, office to Warrant Section. The phone is used for all warrant long distance calls, for informant calls, for "trick" call backs, and for phone tracing purposes.

10) Communications

As reported in the January report the MX 360 portable radios have not been received as of this time. There has been no changes from the last report the radio equipment we presently have is working very satisfactorly.

AAE/lwh

cc: Major Vaden

of ALASKA

MEMORANDUM

TO: Major Ray Rush
Field Enforcement Commander
Zone 2

DATE: March 31, 1978

FILE NO:

TELEPHONE NO:

FROM: Captain John Monagle
Commander
B Detachment, Juneau

SUBJECT: Field Program Report
B Detachment
1st Quarter 1978

EVENTS ADVERSELY AFFECTING LOCAL OPERATIONS:

Manpower continues to be the major problem affecting local operations. B Detachment has been four positions down for the past year. Two of those positions will be filled immediately with transfers. Although we have assumed additional obligations in the vehicle enforcement (commercial vehicles) program, the vacated BVE position is not being filled.

The decision to terminate temporary JSOs and make these positions permanent Trooper positions, has effectively reduced that operation from a four man operation to a two man operation. The additional work is being assigned from Troopers in the respective posts and is therefore the result of additional work with the reduced manpower. If this tendancy continues, it will adversely affect the initiation of any innovative enforcement programs.

With the continuing policy of having to escort prisoners to doctors offices and hospitals for treatment programs, there is a continual drain on the service section officer's time. Unfortunately he has been unable to keep up with the continuing escalation of prisoner demands for treatment and this has necessitated the use of the patrol officer taking him away from his assigned duties.

The lack of funding for SAR Programs which is mentioned in Sergeant Morris Rogers' report, is one that will have to be taken care of through a budgetary process. Expanded SAR efforts will always cost additional money, the majority of which is going to have to be funded through U. S. Coast Guard facilities and personnel.

SIGNIFICANT CHANGES:

The program initiated February 1, 1978, of using the IBM cards in the computer for initial complaints, has worked well to reduce manpower needs and paperwork flow.

New PCN has been received for the fifth Dispatcher I position in Ketchikan.

Chief of Police George Clouse, has been terminated as Chief in Craig Alaska and as yet, no replacement has been hired.

Juneau's bar closing, reduced by three hours, has noticeably affected the availability of the patrol function for security checks and general patrol.

FIELD PROGRAM REPORT

SOLDOTNA POST

March 31, 1978

1. Events Adversely Affecting Local Operations.

Although the goal during this reporting period was special emphasis on on-view patrol, the entire month of January was spent on cross training and in-service training of six Soldotna Post Troopers which was conducted by Marion Sellars in Bureau of Vehicle Enforcement. The instruction was given during daytime hours which left several evening shifts uncovered. This may have been the reason for some of the late evening burglaries.

Another situation which hampered local patrol was the required assignment of one of the Soldotna Troopers to Judicial Services and another trooper on annual leave throughout the three months. Although burglaries and break-ins were minimal, the loss of manpower from patrol could possibly prove responsible for the reported offenses. This shortage in patrol was due to the combination of troopers handling Judicial Services functions from January 8 to February 12 at which time Trooper John Tanguy was assigned Judicial Services for a period of two months. In the future this assignment will change to the various troopers of the Soldotna Post.

I strongly support and contend that the Soldotna Post be reclassified as a flexible post to allow freedom of movement for special projects and programs. This would allow Soldotna Post to initiate a team policing concept for selective enforcement of traffic and other offenses or problem areas and to alleviate additional overtime.

2. Significant Changes.

On February 24, 1978 Soldotna Police Department and Dispatch vacated the present Department of Public Safety building. Soldotna Police Department and Dispatch are now located in the previous City Hall building near the present Public Safety facility. Since this severance, Soldotna Post troopers and supervisors have actively engaged in cleaning this entire structure and rearranging offices. This rearrangement provided additional office space and desks for the troopers and also provided an office which is used for interrogations and interviews. Video equipment has been relocated.

The reassignment of Corporal Schadle as Outpost Supervisor and Sergeant Radisch as Soldotna Post Supervisor has proven effective. Reclassifying as troopers the two Vehicle Enforcement officers and Judicial Service Officer has provided an interrelated duty assignment and all three of these officers are progressing satisfactorily and are handling their additional responsibilities.

A guard hire system has been initiated and seems to be operating satisfactorily. The procedures need to be observed and evaluated for possible streamlining and/or improving.

of ALASKA

MEMORANDUM

TO: Commissioner Richard L. Burton
Department of Public Safety
Juneau

DATE: March 28, 1978

FILE NO:

TELEPHONE NO:

FROM: Lieutenant James Lansbery
Commander Detachment E
Alaska State Troopers
Kodiak

SUBJECT: Field Program Report
1st Quarter
Detachment E

1. Events Adversely Affecting Local Operations

The magistrates' positions at Unalaska, Sand Point, Naknek and Hooper Bay have been vacated during the past quarter. Also the magistrate at Saint Paul Island has indicated that he is going to resign and has submitted an application to the Department of Public Safety for the position of constable there. Of those positions vacated a temporary magistrate has been assigned at Naknek but no date of filling these posts on a permanent basis has been determined yet.

The reclassification of JSOs to trooper level positions, although giving us more versatility in the Kodiak Post itself, caused a reduction of manpower of one man in the Bethel area where the JSO was a temporary and was released.

The bids for the new Kodiak office space were opened the last part of February. Only one bidder responded at that time and did not respond adequately to the conditions of the bid so it was rejected. A new bid date of the 17th of April was set and there are currently several bidders indicating that they are interested in submitting a bid for the space required. Of these, two are indicating that they are interested in building a new building to the specifications set out in the bid.

In December the State Goose assigned to the Kodiak area was left in Anchorage for maintenance to be performed while the pilot was on approximately one month annual leave. Upon his return it was learned that no maintenance had been performed on the aircraft. Aircraft section indicated that they would get to it as soon as possible. Due to several incidents that arose after this period of time i.e. construction of new hanger doors, fire during construction etc. the maintenance on the State Goose has been continually delayed. As of this date indications are that the aircraft will be ready to return to Kodiak approximately the first of April. This has left both AST and FWP Detachments without the use of this aircraft through the entire quarter.

18 WORK DAYS

11/7/78 — 11/24/78
25 WORK DAYS

11/27/78 — 12/22/78
15 WORK DAYS

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 20, 1978

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

The attached fiscal notes are furnished in support of the Administration's position on HB 909.

The position we have adopted is that should additional judges and related positions be funded through special appropriation to the Court System, resources will be required for Executive agencies as well in addition to those planned for in the Governor's FY 79 budget submission. More judges will decrease case calendaring flexibility and require additional attorneys to cover the added courtrooms. Because the appointment process for new judges may take several months, a phase in funding approach is proposed which will authorize some of the resources beginning July 1, 1978 and the rest later in the year.

Sincerely,

Michael C. Harper
Administrative Assistant
to the Governor

bcc:
Avrum Gross, Attorney General
Helen Bierne, Commissioner, Health & Social Services
Richard Burton, Commissioner, Public Safety
Brian Shortell, Public Defender

41% increase in number of law enforcement officers for FY79

8 to 3 judges

Why more state troopers in ANC

219
304

$$308\overline{)220.00} \qquad \frac{41}{28}$$

220

$$85.305\overline{)85.000} \qquad 28$$

610

2400

Startup time needed → to appoint everybody

Cut funding therefore

3 months to Appoint judges

HB
912

HB 912

Alaska Trucking Association, Inc.

3443 Minnesota Drive
Anchorage, Alaska 99503
(907) 276-1149

TESTIMONY

CONCERNING

CIVIL PENALTIES FOR DISCHARGE OF OIL

FOR THE RECORD, I AM BEN BENEDIKTSSON, MANAGING DIRECTOR OF THE ALASKA TRUCKING ASSOCIATION. MY ASSOCIATION IS MADE UP OF SOME 17,000 EMPLOYEES WORKING FOR MY 600 MEMBER FIRMS WHO DELIVER VIRTUALLY ALL OF YOUR FOOD, HOUSEHOLD NECESSITIES, AND FUEL.

WE ARE VERY CONCERNED WITH THE ENTIRE SUBJECT OF OIL SPILLS. VERY FEW OF MY MEMBERS ARE PURE CARRIERS IN THE SENSE THAT A YELLOW FREIGHT OR CONSOLIDATED FREIGHTWAY EXISTS IN THE LOWER 48. ALMOST ALL OF MY MEMBER CARRIERS ARE INVOLVED IN A VARIETY OF TYPES OF AUTHORITIES. FOR EXAMPLE, MY TYPICAL MEMBER WILL HAVE AUTHORITY TO MOVE GENERAL COMMODITIES, HOUSEHOLD GOODS, AND FUEL. A LARGER NUMBER OF RELATIVELY SMALL CARRIERS ARE INVOLVED IN FUEL DELIVERIES THAN IS THE CASE IN THE TYPICAL LOWER 48 AREA.

THE HANDLING OF FUEL BY TRUCK IS AN ABSOLUTE NECESSITY TO THE SURVIVAL OF MOST OF THE COMMUNITIES AND CITIES IN ALASKA. WITHOUT THE REQUISITE TANK TRUCKER DELIVERING YOUR HOME HEATING OIL, MANY OF MY MEMBERS AND YOUR CONSTITUENTS COULD NOT SURVIVE.

THE SUBJECT OF THIS HEARING IS HB 912, CONCERNING MANDATORY OIL SPILL PENALTIES. IN THE LAST HALF SESSION, THE LEGISLATURE PASSED HB 137 WHICH, WHILE APPARENTLY BASED ON GOOD INTENTION, WAS BAD LAW. THE APPARENT INTENT WAS TWO FOLD - (1) TO PROVIDE AN

INCENTIVE TO ENSURE SAFER HANDLING OF LARGE QUANTITIES OF OIL AND (2) TO PLACE DOLLARS INTO THE GENERAL FUND TO OFFSET ENVIRONMENTAL REPAIR COSTS, FOR DAMAGE RESULTING FROM LARGE SCALE OIL SPILLS. UNFORTUNATELY, WHAT HAS HAPPENED AS A RESULT OF THE PASSAGE OF AS 46.03.758 IS THAT THE SMALL OIL CARRIER IS PLACED IN A POSITION IN WHICH HE CAN BE SERVED WITH AN ARBITRARY FINE FOR AN OIL SPILL, REGARDLESS OF ACTUAL ENVIRONMENTAL DAMAGE. THAT FINE CAN BE VERY SIGNIFICANT AND, IN FACT, PROBABLY WOULD PUT A LARGE MAJORITY OF MY MEMBERS OUT OF BUSINESS IF THE FULL PENALTIES WERE TO BE ENFORCED IN A RELATIVELY SMALL SPILL.

ATTACHED ARE WORK SHEETS FOR POTENTIAL OIL SPILLS IN TWO TYPICAL CASES OF TRUCK ACCIDENTS.

HB 912 WAS PROPOSED TO ELIMINATE THE SMALL OIL SPILL FROM PENALTIES AGAINST WHICH THE OPERATOR CANNOT EVEN BE INSURED. THERE IS A COMPANION BILL (SB 557) PRESENTLY BEING PROCESSED THROUGH THE SENATE WHICH PROPOSES ESSENTIALLY THE SAME SOLUTION TO THE CIVIL PENALTY PROBLEM AS HB 912. IT IS OUR RECOMMENDATION THAT THE TWO BILLS BE COMBINED. WE THINK THAT THE RATIONALE SUPPLIED BY HB912 AND THE GALLONAGE FIGURE SUPPLIED WOULD PROVIDE THE PROTECTION NECESSARY TO CARRY OUT THE INTENT OF THE ORIGINAL LEGISLATION. OUR TANK TRUCKER NOW RUNNING THE HIGHWAYS CARRY A MAXIMUM LOAD OF ABOUT 11,500 GALLONS OF PETROLEUM PRODUCTS. SINCE THE TREND HAS BEEN TOWARD LARGER EQUIPMENT WE SUGGESTED THAT

A FACTOR OF 12,500 GALLONS BE USED TO AFFECT THE LOWER LIMIT OF CIVIL PENALTIES. THIS WILL PROVIDE PROTECTION NECESSARY FOR THE NEXT SEVERAL YEARS. IN EARLIER HEARINGS OF THIS BILL THE 12,500 GALLON FIGURE WAS REDUCED TO 12,000. THAT IS FINE BY US.

THE ATA STRONGLY RECOMMENDS THE ADOPTION OF HB 912 IN ITS ENTIRETY.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS	FACTORS
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSIBILITY	.15
	1.40/3=.466

FRESHWATER CRITICAL = $10.00/GAL.

COMPUTATION :-

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = $23,300

WITH GROSS NEGLIGENCE

$23,000 @ 5 = 116,500

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:	FACTOR
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSABILITY	.15
	1.40/3=.466

MARINE CRITICAL = $ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = $2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

HB 912

March 30, 1978

ALASKA LEGISLATION - 1978
S.B. 557
OIL SPILL PENALTIES

This bill, which amends H.B. 137, Chapter 129 of the 1977 Session, should be further amended as follows:

1. Section 46.03.758(a)(2) is amended to read:

> "~~the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however,~~ in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abur lance and beauty to the economic future of the state, and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil, in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, ~~because of its subtle, long-term or unquantifiable nature,~~ compensation would not otherwise be received; and however, it is not the intent of this section to impose a civil penalty for discharge of oil where there is no demonstrable damage to the environment; and"

This amendment is the most important of the four. It deletes the reference to unquantifiable damage, a thoroughly illogical concept which no one has ever been able to explain, and it adds language to require a demonstration that environmental damage has occurred before penalties under this law can be imposed.

The existing law, which does not require evidence of environmental damage before imposing penalties, must be considered punitive. Yet, subsection (a)(3) states this should not be the case.* Thus, this amendment would render the penalty remedial rather than punitive.

2. Section 46.03.758(b)(1) is amended to read:

> "Subject to subsection (a)(2) and to ~~(3)~~ (2) of this subsection, the penalties for the following categories of receiving environments may not exceed"

Making the penalties subject to subsection (a)(2) is a precaution to ensure that penalties will not be imposed unless it is demonstrated that environmental damage occurred.

*46.03.758 (a)(3) "in order to provide an incentive which is effective, but not punitive."

The change from (3) to (2) is a technical change. There is no (3) in subsection (b).

3. Section 46.03.758(d) is amended to read:

> "The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. And, the schedule shall take into account seasonal changes. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or less sensitive receiving environments."

This is consistent with past arguments that seasonality is an important factor in determining potential enviromental damage. Also, it reinforces our first amendment. "Less" is added before "sensitive" in the interest of good construction.

4. Section 46.03.758(g) is amended to read:

> "Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. ~~In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply.~~ Only when no such mitigating circumstances exist shall the schedule of full penalties apply."

The language deleted describes the body of scientific knowledge pertaining to oil spills as "very limited." This is simply not true. The scientific community, academicians, government, and industry have produced volumes of data on the fate and effects of oil spills (an abbreviated bibliography is attached), and their work is continuing. Therefore, the deleted sentence cannot be justified.

HB
949

Introduced: 4/26/78
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 949

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

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

* Section 1. AS 12.45.090 is amended to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and [PUBLIC PEACE OR] safety of others, the court shall order him to be committed to an institution authorized by the commissioner of health and social services to receive that person, and held in custody until the disease is cured or the defect corrected or until he is judged to be no longer dangerous to others or he is otherwise discharged from the institution by authority of law. The commissioner of health and social services shall provide the court with reports detailing the status, progress, and prognosis of persons committed under this subsection at least once every six months.

* Sec. 2. AS 12.45.090 is amended by adding new subsections to read:

(b) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court does not consider his being at large dangerous to the health and safety of others, the court shall order his discharge.

(c) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and safety of others but determines that

- Burden of Proof
- Jury trial

the defendant can be controlled in the community with proper supervision, the court may commit him to the custody of the commissioner of health and social services and may order his conditional release under supervision, subject to such conditions as the court may impose, for a period of no more than three years in accordance with sec. 92 of this chapter.

* Sec. 3. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.092. CONDITIONAL RELEASE AFTER JUDGMENT OF NOT GUILTY. (a) A defendant committed under sec. 90(a) of this chapter may be released by court order and placed under supervision in a non-institutional setting for a period of no more than three years, subject to such conditions as the court may impose. The court may, upon application by the defendant, his attorney, the medical director of the institution, or other interested party, conduct a hearing to determine if conditional release under supervision is appropriate.

(b) A defendant released under sec. 90(c) of this chapter or (a) of this section may be returned to custody if the court finds, after a hearing, that he is not in substantial compliance with the conditions of his release or that he is a danger to the health and safety of others and can no longer be controlled in the community under supervision.

(c) A defendant released under sec. 90(c) of this chapter or under (a) of this section may petition the court at any time for a discharge hearing.

(d) The commissioner of health and social services shall provide the court with progress reports detailing the mental status, treatment plan, progress, and prognosis of persons released under sec. 90(c) of this chapter or under (a) of this section at least every six months.

(e) A defendant released under sec. 90(c) of this chapter or (a) of this section shall be discharged from supervision at the expiration

of three years from the date of release unless the court finds, after a hearing, that the defendant continues to pose a danger to the health and safety of others and cannot be controlled in the community without continued supervision, in which case the defendant shall be continued under supervision subject to such conditions as the court may impose.

(f) When a defendant is not discharged from supervision after three years under (e) of this section, the court shall conduct a hearing not less frequently than once each year to determine whether the defendant should be discharged or continued under supervision.

(g) At any time during the period of supervision the court may revoke or modify the conditions of supervision or order of release.

(h) A defendant committed under sec. 90(a) of this chapter or released under sec. 90(c) of this chapter or (a) of this section is not liable for the expenses of hospitalization or transportation incurred as a result of his commitment or release.

POSITION PAPER/Department of Health and Social Services

HOUSE BILL 949

"An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

The Department of Health and Social Services supports House Bill 949. It is our position that A.S. 12.45.090 is inadequate as written as it falls far short of providing the necessary statutory provisions and flexibility in the treatment and management of these persons.

Presently, treatment for persons committed under A.S. 12.45.090. Commitment After Judgment of Not Guilty is limited to inpatient psychiatric treatment in a secure facility until the disease is cured or the defect corrected. When released from the institution these persons are discharged unconditionally and without any form of supervision. This may result in persons remaining institutionalized for a longer period than may be necessary and/or being released as free citizens when court imposed conditions and supervision upon release would be desirable.

Typically, persons committed under A.S. 12.45.090 are those who have committed serious felony offenses such as murder, rape, assault with a dangerous weapon, or other violent crimes. Those persons declared innocent by reason of mental disease or defect of less serious misdemeanors are generally either committed under A.S. 47.30 (civil commitment) to the Alaska Psychiatric Institute or released by the court.

House Bill 949 would seem to remedy the either/or situation described above by offering an alternative of conditional release with the court retaining jurisdistion. In the event the person was unable to maintain himself in a less secure setting or to comply with the court ordered conditions of his release he could be returned to court for further proceedings and perhaps returned to the secure psychiatric institution if necessary. On the other hand, those persons that demonstrate to the courts satisfaction that they have made a satisfactory recovery and further supervision is not necessary could be discharged.

Examples of alternatives to the inpatient psychiatric treatment would include outpatient clinic services, partial hospitalization, nursing home care, halfway houses, chemotherapy, and alcoholism and drug abuse programs.

Persons conditionally released under this bill could be supervised by staff of the Department of Health & Social Services.

For persons committed to an institution under A.S. 12.45.090(a) it is requested that on line 14 the word "psychiatric" should be inserted prior to the word "institution". The addition of the word "psychiatric" to Section 12.45.090(a) will assure that the institution to which persons are committed under that section is clearly defined.

Recommended by:

Thomas R. Brandon for 5/8/78

Jerry L. Schrader, M.D. Date
Director, Div. of Mental Health & Developmental Disabilities

Approved by:

Helen D Beirne 5/9/78

Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 949

Title Treatment of persons found not guilty on the ground of mental health or defect.

Requested by Judiciary Committee Date 4/26/78

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Mental Health and Developmental Disabilities

Budget Request Unit(s) Affected

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Based on present numbers of commitments under AS 12.45.090, an increased expenditure to implement House Bill 949 is not anticipated by the Department of Health & Social Services. As there are only 13 persons currently hospitalized under AS 12.45.090, and many of these are long term patients, the immediate impact on caseloads is expected to be minimal. However, it is possible that more defendants may rely on an insanity defense if House Bill 949 passes as it will allow a community treatment program as an alternative to inpatient treatment or possible incarceration if found guilty.

IV. DATE May 4, 1978 PREPARED BY James L. Scoles

AGENCY Department of Health & Social Services

PHONE 465-3370

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

Clarify that judge has the authority to institutionalize dangerous defendant if found insane

reflects existing practices ⇒ statutory clarification

Introduced: 4/26/78
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 949

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

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

* Section 1. AS 12.45.090 is amended to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and [PUBLIC PEACE OR] safety of others, the court shall order him to be committed to a psychiatric institution authorized by the commissioner of health and social services to receive that person, and held in custody until the disease is cured or the defect corrected or until he is judged to be no longer dangerous to others or he is otherwise discharged from the institution by authority of law. The commissioner of health and social services shall provide the court with reports detailing the status, progress, and prognosis of persons committed under this subsection at least once every six months.

* Sec. 2. AS 12.45.090 is amended by adding new subsections to read:

(b) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court does not consider his being at large dangerous to the health and safety of others, the court shall order his discharge.

(c) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and safety of others but determines that

(1) Should never exceed maximum for offense
(2) What is burden of proof

the defendant can be controlled in the community with proper supervision, the court may commit him to the custody of the commissioner of health and social services and may order his conditional release under supervision, subject to such conditions as the court may impose, for a period of no more than three years in accordance with sec. 92 of this chapter.

* Sec. 3. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.092. CONDITIONAL RELEASE AFTER JUDGMENT OF NOT GUILTY. (a) A defendant committed under sec. 90(a) of this chapter may be released by court order and placed under supervision in a non-institutional setting for a period of no more than three years, subject to such conditions as the court may impose. The court may, upon application by the defendant, his attorney, the medical director of the institution, or other interested party, conduct a hearing to determine if conditional release under supervision is appropriate.

Simplify Sec #3

(b) A defendant released under sec. 90(c) of this chapter or (a) of this section may be returned to custody if the court finds, after a hearing, that he is not in substantial compliance with the conditions of his release or that he is a danger to the health and safety of others and can no longer be controlled in the community under supervision.

(c) A defendant released under sec. 90(c) of this chapter or under (a) of this section may petition the court at any time for a discharge hearing.

(d) The commissioner of health and social services shall provide the court with progress reports detailing the mental status, treatment plan, progress, and prognosis of persons released under sec. 90(c) of this chapter or under (a) of this section at least every six months.

(e) A defendant released under sec. 90(c) of this chapter or (a) of this section shall be discharged from supervision at the expiration

of three years from the date of release unless the court finds, after a hearing, that the defendant continues to pose a danger to the health and safety of others and cannot be controlled in the community without continued supervision, in which case the defendant shall be continued under supervision subject to such conditions as the court may impose.

(f) When a defendant is not discharged from supervision after three years under (e) of this section, the court shall conduct a hearing not less frequently than once each year to determine whether the defendant should be discharged or continued under supervision.

(g) At any time during the period of supervision the court may revoke or modify the conditions of supervision or order of release.

(h) A defendant committed under sec. 90(a) of this chapter or released under sec. 90(c) of this chapter or (a) of this section is not liable for the expenses of hospitalization or transportation incurred as a result of his commitment or release.

HB
975

HB 975

Alaskan Youth Village

Lavon Kindell

licensed by H&SS
private, non-profit residential
child care agency.

concerned about accreditation
problems which could result
if had to deal with Dept of Educ.

accreditation would requirement
would probably prohibit

Dale Sies
will testify

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 18, 1978

SUBJECT: Amendment to HCS SB 428

TO: House Judiciary Committee

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

You have asked whether HCS SB 428 could be amended by adding the material contained in HB 975. In my opinion it could.

Both bills deal with the subject of permits and licenses under limited entry. The material currently in HCS SB 428 deals with transfer and revocation of limited entry permits and the material in HB 975 allows entry permits for educational purposes.

It would appear that combining these acts would not create a violation of the single subject rule contained in Art. II, sec. 13 of the Constitution of Alaska which reads in relevant part:

> "Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws."

There is some doubt as to the precise parameters of the single subject rule in Alaska. In a case construing this clause of the constitution in relation to a general obligation bond bill, Gellert v. State, 522 P2d 1120 (Alaska 1974), our court stated

> "Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In determining whether a bill is confined to one subject, we agree with the statement: 'All that is necessary is that act should embrace some one general subject; and

> by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject'."

The common thread of the matters dealt with in both bills in entitlement to Limited Entry Permits. This would appear to include obtaining, transferring and revoking permits. The subject matter appears to be connected with and related to each other logically so as to be parts of one general subject.

I have, therefore, prepared a committee substitute for SB 428 incorporating the provisions of HB 975.

BGB:jpd

Enclosure

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMO: May 29, 1978

TO: Terry Gardiner, chairman

RE: HB 975, educational ltd. entry permits

Terry --

I talked to Dave George of the Limited Entry Commission the other day about this bill. He has drafted a proposed committee substitute for our consideration and someone from the commission, proabably Adasiak, will be here for consideration, to testify and/or answer questions.

They have some good points, I believe. There are five basic points:

1. page 1, line 17: "private agency" should be defined more specifically. Should it be private non-profit, or what? From the language, it could be day-care centers or the Cub Scouts from my reading of the bill. Also, the provision "private agencies involved in the training or rehabilitation of or care for minors" appears to exclude Sheldon Jackson College, since college students are very often not minors.

2. page 2, line 3: ADF&G is normally given authority over limiting the amount of fish caught; D. George says the Limited Entry Commission has no authority, and this provision should be delegated to Fish and Game.

3. page 2, line 5: accounting for profits is also outside the normal authority of the entry commission, and perhaps ADF&G or the Department of Revenue would be more appropriate.

4. There is no provision in the bill for transferability. Normally entry permits are transferable and the entry commission believes these should not be. They should be non-transferable and/or renewable each year by application; and should revert to the state if they are not used.

5. The general concern has been expressed that the way the bill is currently written someone might be able to take advantage of an association with some "private agency" and use a permit for their own benefit. The above changes seem to limit that possibility.

The Judiciary CS for SB 428 does not resolve these issues.

Proposed by Limited Entry Commission

Introduced: 5/17/78
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 975

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE -- SECOND SESSION

A BILL

For an Act entitled: "An Act relating to entry into Alaska commercial fisheries for educational purposes; and providing for an effective date."

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

* Section 1. As 16.43.100 is amended by adding a new paragraph to read:

(14) issue educational entry permits to applicants who qualify under the provisions of secs. 350 - 375 of this chapter.

* Section 2. As 16.43 is amended by adding new sections to read:

ARTICLE 6. EDUCATIONAL ENTRY PERMITS.

Sec. 16.43.350. EDUCATIONAL ENTRY PERMITS. (a) In addition to entry permits and interim-use permits, the commission may issue educational entry permits to public, private or denominational educational institutions accredited by the State of Alaska Department of Education or accredited institutions, career or vocational programs approved by the State of Alaska Post-Secondary Education Commission, which are located within the state, if

(1) the program is offered to students at the high school level or above;

(2) the issuance of an educational permit is reasonably necessary to the instruction of students under courses offered by the applicant for the educational entry permit;

(3) the program is offered by an institution which has been in operation for at least two years; and

(4) the institution offering the program is not a correspondence institution.

(b) An educational entry permit may only be used in a program conducted by the recipient thereof for the purpose of training students in the methods of commercial fishing.

(c) The commission may issue educational entry permits notwithstanding the establishment of maximum or optimum numbers under secs. 240 and 290 of this chapter, respectively.

Sec. 16.43.355. TERM AND CONDITIONS OF EDUCATIONAL ENTRY PERMIT.

(a) Educational entry permits may be applied for annually and shall be issued for a term of one year and are non-transferrable.

(b) A recipient may be issued an educational entry permit for each fishery in the administrative area the commission determines to be appropriate, considering the nature of the educational program and the location of the educational or vocational institution. The recipient of an educational entry permit shall not be issued educational entry permits in more than one administrative area except as issued by the commission in its discretion upon good cause shown.

(c) Consistent with the provisions of sec. 350 of this chapter, an educational entry permit may be used by any agent or employee authorized by the recipient of the educational entry permit.

(d) Annual fees for educational entry permit shall be as specified by commission regulation under the authority of sec. 160 of this chapter.

Sec. 16.43.360. DISPOSITION OF FISH. Fish caught under the authority of an educational entry permit are the property of the recipient of the permit; which may sell the fish and use the proceeds to pay for the costs of the training program.

Sec. 16.43.365. ACCOUNTING OF HARVEST. The recipient of an educational entry permit shall report to the commission costs and earnings, amount of harvest and such other information the commission requires to monitor fishing operations of recipients of educational entry permit.

Sec. 16.43.370. ADOPTION OF REGULATIONS. (a) Use privileges granted under secs. 350 -375 of this chapter shall be subject to the regulations of the Board of Fisheries which may adopt regulations exclusively applicable to the use of educational entry permits.

(b) The commission shall promulgate regulations relating to the issuance of educational entry permits, establishing eligibility criteria for recipents thereof,

and such other matters as are reasonably necessary to implement secs. 350 - 375 of this chapter.

Sec. 16.43.375. DEFINITIONS. For the purposes of secs. 350 - 375 of this chapter, the term

(1) "recipient" means the entity to which an educational entry permit is issued;

(2) "administrative area" means those areas as defined by commission regulation.

* Section 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMO: May 18, 1978

TO: Legal Services, Bill Berrier

FROM: House Judiciary, Bob Speed, A.A.

RE: HB 975 Entry permits for educational purposes
SB 428am Interim Use permits, entry permits and vessel licenses

The Judiciary Committee currently has the above-mentioned bills under consideration. Chairman Gardiner has requested a legal opinion on combining the two bills by amending HB 975 onto SB 428am.

We request a written opinion on the above amendment; if Legal Services sees no problem, the Committee will request a CS incorporating the intent of both bills.

It is also requested that the attorney handling the above matter be available in the event he is needed during committee consideration of the bill, which will probably be early next week.

HCR

7

House Judiciary Committee
February 7, 1977

The meeting was called to order at 3 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason, Specking and Rudd. Mr. Brown was absent.

HB 27 Removing the exemption of banks from anti-trust law HB 27

The committee had considered and heard testimony on this bill at a previous meeting. Mrs. Rudd moved that HB 27 be moved out of committee. The motion carried 3-2, so the bill was moved out.

HB 60 Compulsory School Attendance HB 60

The committee reviewed the committee substitute that had been submitted for this bill. After a minor amendment in wording, Mr. Specking moved that the committee substitute for the bill be moved out of committee. There being no objection, this was done.

HB 127 Penalties for Driving While Intoxicated HB 127

Mr. Meekins was here to testify on this bill, for which he is a sponsor. Questions were asked of Mr. Meeking and a general discussion followed.

Bill Huston, Director of the Division of Corrections, was here to present a position paper on this bill.

Mr. Specking moved that the bill be amended to specify that the imprisonment had to occur on consecutive days, so that offenders couldn't be imprisoned at their convenience, i.e. on weekends. The motion carried.

Mrs. Rudd moved that HB 127 be moved out of committee. The motion carried and this was done.

HCR 7 Requesting the Judicial Council to investigate the prison system HCR 7

Mr. Bradley was here to testify on this resolution, for which he is a sponsor.

Mr. Huston, Director of the Division of Corrections, was here to present a position paper on the bill.

After some discussion, the committee decided that Mr. Bradley, the Division of Corrections, and the Judicial Council should all get togeher to talk this over and determine how the study would be done.

HCR 7 was set aside for the time being.

HCR 17 Conducting business of district courts in the evening HCR 17

Mr. Bradley testified on this resolution, for which he is a sponsor.

Mr. Rudd moved that the wording "in the evening" be replaced with "after normal working hours" (lines 6,17,19). The motion carried.

It was moved that lines 13 and 14 be deleted. The motion carried.

It was suggested that the wording on line 18 "direct the district courts"be perhaps changed after a fiscal note for this resolution had been received, and after the committee was further aware of what the courts would be "directed" to do.

HCR 17 was set aside until the receipt of a fiscal note.

The meeting was adjourned at 4:15 p.m.

STATE PAPER/Department of Health and Social Services

POSITION PAPER
HCR NO. 7

"Requesting the Judicial Council to investigate the prison system."

The Department of Health and Social Services recognizes that a positive answer to significantly reduce the high incidence and growth of crime in our society continues to elude the finest minds in the field of penalogy. Almost every conceivable preventative and rehabilitative program has been tried, tested, abandoned, modified and tried again without significant results. The rise in crime rates is not peculiar to Alaska; it is a national phenomonen.

The small population of Alaska and its geography offers some particular advantages for crime control. However, an overwhelming disadvantage is the lack of sufficient funds to conduct broad crime prevention, and rehabilitation, such as inmate industries programs where meaningful employment and job skills can be developed. The present Division of Corrections' administrators goals are to provide,

1. protection of the public;
2. humane treatment;
3. mandatory services required by law, and
4. necessary and constructive services, within budgetary and facility limitations, to prisoners who need and request them.

The Division of Corrections can, by simple comparison, show positive results, particularly, in the area of a number one concern - protection of the public. The incidents of escapes have been dramatically reduced during the past year.

The high number of escapes, as well as serious crimes, committed by some of the escapees in 1975 prompted the Governor's Task Force investigation into the Division of Corrections. A special Technical Assistance Team, who were selected for their expertise in the corrections field from the Law Enforcement Assistance Administration, were hired to assist the Task Force.

The recommendations resulting from the investigation are in the process of being implemented; many are already completed.

There will always be conflicting opinions on what should be the major role and purpose of the prison system. The state constitution spells it out as, "reformation and the need to protect the public."

No other segment of the Criminal Justice System comes under more public scrutiny or investigation than that of corrections. Public confidence will continue to be at its lowest ebb unless the system is given the opportunity

between investigations to make some accomplishments mandated by law, and those assigned executively as the result of previous special investigative recommendations.

Recommended: _____ 1/29/75

William H. Huston, Director
Division of Corrections

Date

Concurrence: _____

Commissioner, Dept. of
Health & Social Services

Date

DSI IRON PAPER/Department of Health and Social Services

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HCR No. 7
Title Requesting the Judicial Council to Investigate The Prison System
Requested by Bradley, Cotton, and Miller Date 1/17/77

II. FISCAL DETAIL
Agency Affected HEALTH & SOCIAL SERVICES
Program Category Affected JUSTICE
Budget Request Unit(s) Affected ADULT CONFINEMENT

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

There would be no fiscal impact other than staff time which would necessarily be devoted to responding to study inquiries.

IV. DATE 1/21/77 PREPARED BY Leland T. Dalby, Administrative Officer
AGENCY Division of Corrections
PHONE 465-3375

Original: Legislative Finance

Introduced: 1/17/77
Referred: Health, Education & Social Services and Judiciary

BY BRADLEY, COTTEN AND MILLER

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

Requesting the Judicial Council to investigate the prison system.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the incidence of crime in our society continues to grow even though a high percentage of the criminals have served some time in jail or prison on a previous offense; and

WHEREAS conflicting opinions exist as to what should be the major role and purpose of the prison system in our state, and as to how well our prison system reflects and accomplishes that purpose; and

WHEREAS public confidence has been shaken by the apparently high number of escapes from our penal institutions and by a lack of understanding of the functioning and goals of our prison system;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the Judicial Council to investigate prison systems and their effect upon crime in society and to recommend to the Tenth State Legislature - Second Session the goals to which our prison system should be directed and the measures which should be undertaken to implement those goals.

In Co-ordination with Leg's Council + Dept of HESS

(Justice Commission — Master Plan 1st phase —

40,000

175,000 in LEAA available for more funding

#

SB

12

My SB 12 file

MEMO April 7, 1977

FROM SENATOR ZIEGLER

TO REPRESENTATIVE FREEMAN
REPRESENTATIVE GARDINER

RE HJR 13, HB 106, HB 173

I talked to the Chamber types on April 6th. I was advised that their legislative committee has endorsed the captioned legislation. I told them that as far as I knew these three items were either dead or moribund but, in any event, they didn't show much hope for posterity.

RHZ/pkz

P.S. Enclosed is the tentative schedule for the visit next week.

Terry:

Paula tells me you would like to talk about SB 12. Although I originally put it in to get somebody's attention, I have concluded that it is an idea whose time has come and that we should do everything we can, notwithstanding the protestations of the court system, to push it through. My neck is bowed!

Z

MEMO April 5, 1977

FROM SENATOR ZIEGLER

TO REPRESENTATIVE FREEMAN
REPRESENTATIVE GARDINER

RE SB 12

SB 12, the bill by which we would acquire an additional Superior Court judge in Ketchikan, passed the Senate on March 31st. The bill is opposed by the court system, which takes the view that there isn't enough business at home to keep one Superior judge busy, much less two.

What the court system fails to grasp is that the work load of a Superior Court judge is not as important to litigants and the local bar as the availability of a Superior Court judge. Based on information furnished me by Judge Schulz's secretary, Judge Schulz was off the bench more than he was on it between August 1st and December 31st of last year. It is very frustrating for lawyers and their clients who have a firm trial date set to be advised that Judge Schulz, for whatever reason, was out of town and would be gone for several days or, in some instances, several weeks.

This bill is very important to our community, because with two Superior Court judges, one of whom would be in town on each of the 365 days in a year, we would no longer have the aforementioned problem.

Concommitant with the obtaining of another Superior Court judge would be the phasing out of the District Court judge. Judge Keene is not at all perturbed about this possibility.

The Senate Finance committee estimated that the increased cost would be $26,000, but as I recollect, the cost figure in connection with the Kodiak, Bethel and Sitka situations is somewhere around $7500.

I am in the process of letting the Chief Justice know that if he perseveres in thwarting our efforts, it is quite likely that his presumptive sentencing bill will have a difficult time making it through the legislature.

RHZ/pkz

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
RULES

VICE CHAIRMAN
JUDICIARY
LEGISLATIVE COUNCIL
COMMITTEE ON COMMITTEES

January 11, 1978

Representative Terry Gardiner
Chairman
House Judiciary Committee

Dear Terry:

You'll recollect the House Judiciary committee very courteously afforded me the opportunity last year to address it on the subject of Senate Bill 12, a bill which would authorize the creation of an additional Superior Court judgeship in Ketchikan. At the time the bill was introduced, it was my intention to get the attention of the court system, for I felt that the one Superior Court judge we do have, Tom Schulz, an excellent judge, was being assigned to trials elsewhere in the state more than he should have been. I believe I furnished the committee with some statistics which substantiated that assertion.

Please bear in mind that nobody has ever complained or said a harsh word about the caliber of our judiciary; the thrust was directed toward the unavailability of justice at times when many members of the Ketchikan Bar Association were complaining, not to mention the litigants involved in pending court actions.

I am pleased to report that the situation has to a large extent been cured. The court system hasn't deprived us of our Superior Court judge nearly so much as it did in the past; there are few, if any, complaints about the lack of a Superior Court judge. Furthermore, Judge Compton and occasionally Judge Stewart have filled in for Judge Schulz on those currently infrequent occasions when he is not on the bench in Ketchikan.

Ergo, it would seem that as a result of the changed circumstances, Senate Bill 12 is not necessary at this time. Accordingly, I am requesting you to hold it in abeyance. Should it be needed in the future, I'll be in touch with you.

Incidentally, Judge Schulz has expressed satisfaction with the situation and advised me unofficially that as a result of his curtailed travel, he has been in a better position to handle his Ketchikan docket efficaciously.

Regards,

RH Ziegler

Robert H. Ziegler, Sr.

cc - House Judiciary Committee Members

SB 12 files

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

May 6, 1977

Lew Williams, Jr.
Editor
Ketchikan Daily News
P. O. Box 7900
Ketchikan, Alaska 99901

Dear Editor:

There has been a considerable amount of publicity in the past few weeks concerning the level of judicial services being provided in Ketchikan. The publicity has, to a large extent been generated by S. B. 12, a Bill introduced by Senator Ziegler, that would, if passed, abolish the District Court position in Ketchikan and add a second Superior Court position. The rationale behind the Bill was apparently the belief that the court system has been derelict in providing adequate personnel for the Ketchikan area.

As the incumbent Superior Court Judge for this area, I must take exception.

To begin with, I had a long conference with Senator Ziegler, Mr. Cloudy and Mr. Brown on a Saturday afternoon last fall during which the caseload in Ketchikan and my assignment to other Districts in the State were discussed. These items have been the subject of discussion, not only between the persons already mentioned, but between myself and other members of the Ketchikan Bar Association on other occasions and I had also discussed the matters with the Presiding Judge of this District and the Administrative Director of the Alaska Court System. When I arrived in Ketchikan there was a substantial backlog of cases that had been ready for trial for some time and that backlog was still with us to some extent as late as last fall. However, the backlog in Ketchikan was miniscule compared to the backlog in the Third District and the Fourth District. I told the Ketchikan Bar Association, the Presiding Judge for this District and the Administrative Director that I would accept assignments to the Third and Fourth Districts whenever I could to help out with larger backlogs in those areas. I did that.

The problem all over the State has been largely the result of sloppy calendar practices on the part of the judges and while I can not speak for other areas in the State, I can say that I and my staff in Ketchikan have resolved those problems here and our Civil and Criminal calendar is current, and, in my opinion, in better shape than anywhere else in the State.

At the time of the conversation last fall, there were several things in the wind that indicated that Ketchikan might experience a substantial growth in a relatively short period of time. Because we were still dealing with a large number of old cases, the calendar here was already crowded. It generally takes far too long to get additional judicial personnel when they are needed. I had firsthand experience with that in Fairbanks last year and the reaction of the Legislature and the Judiciary to a demonstrated need for an additional judge of general jurisdiction was, in my opinion, too damn slow. With those factors in mind I agreed with Senator Ziegler and others that they would probably need to introduce legislation providing for an additional Superior Court Judge in this area. The thought was that it would take two or three years to get the judge and that by that time, the need would be crystal clear. I do not believe that anyone at the meeting contemplated that the Bill would pass this year nor do I believe that anyone at the meeting believed that the judge was needed this year.

Shortly after that, I changed venue in a case from Ketchikan to Juneau. The case was ready for trial and time had been set aside in Ketchikan to try it, so I went to Juneau and tried the case for for two weeks. I had scheduled in J neau a complicated contract case to follow, but that case was not ready for trial and so I faced the prospect of a month with a very light calendar. Rather than sit around here, I agreed to go to Fairbanks and try criminal cases. That kept me out of Ketchikan for six weeks, but it also kept me busy. Shortly after I returned from Fairbanks, I went to Anchorage for the Judges' Conference and stayed there to clear up remaining matters in cases that had been assigned to me in that area. Then came a short vacation after which, I returned to Juneau and tried the contract case that I mentioned earlier and a serious felony case on which the judges in Juneau had been disqualified.

I have been back in Ketchikan since February and I have told the Administrative Director that I do not want assignments out of the District for the remainder of this year for the very simple reason that I am sick and tired of traveling and I want to stay home for awhile.

However, we have to my knowledge no Civil cases that are ready for trial that are not now set for a trail date certain nor do we have any pending Criminal cases not now scheduled for trial. In other words, the calendar in Ketchikan, is current and I have every reason to believe that it will remain so in the future. Because I and the other persons in the Court System in Ketchikan have worked

to get the calendar in the shape that it is presently in. I take strong exception to any implication that the Judicial System or myself have slighted the needs in Ketchikan in any way.

If the condition of the calendar in Ketchikan remains as it is now, I can not support an additional judge for this area this year or next. It would simply mean that one of us would have to travel all the time.

Very truly yours,

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Robert H. Ziegler, Sr.
Hon. Terry Gardiner
Hon. Oral Freeman
Hon. Robert Boochever
Hon. Thomas B. Stewart
Mr. Arthur H. Snowden, II

House Judiciary
May 3, 1977

The meeting was called to order at 3:55 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Brown and Rudd. Mr. Dankworth, Mr. Eliason and Mr. Carpenter came late.

SB 12 Number of superior court and district court judges SB 12

Senator Ziegler was here to speak in support of SB 12 for which he is a sponsor. He explained the existing problem as being that Ketchikan's Judge Schultz is frequently called to Anchorage leaving Ketchikan without a judge. Sen. Ziegler would like to see a superior court judge in Ketchikan at all times.

Senator Ziegler requested that the committee put this bill in the drawer for now. He said that he will carefully monitor the superior court position in Ketchikan between now and next year, and may ask that the bill be reconsidered next year if he senses the need.

The committee agreed to set the bill aside for now.

SB 151 Tort claims against the State of Alaska SB 151

Gardiner briefly explained why he hade brought this bill up before the committee.

Tom Koester from the Attorney General's office was here to support the bill, which is an administration bill.

Brown moved that consideration of SB 151 be postponed indefinately. Gardiner explained that a committee could not do this, as it would kill the bill for this year. Brown changed his motion to table the bill. The motion to table the bill failed.

There was a very legthy, involved discussion after which the committee decided not to do anything with the bill at this time.

The meeting was adjourned at 5:00 p.m.

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

April 5, 1977

Hon. Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Senate Bill 12.

Dear Terry:

I understand that your committee has at present a Bill that would eliminate the position of District Court judge in Ketchikan. In order to clarify the picture, the abolition of my position would leave me in a very peculiar position. I have no intention of retiring in the foreseeable future.

This past month marked the termination of ten years on the Bench in Ketchikan during which period I feel I have gained a wealth of knowledge and experience. Whether this could be converted to a possible position on the Superior Court Bench is something that is at best risky and problematical.

In brief, I would appreciate your opposition to this Bill as there is no requirement for two Superior Court judges in Ketchikan. Such action would result in a completely unnecessary expenditure of money that is not justified by the workload, and is opposed by the Court System.

If there is anything further I can add on this subject, please let me know and I will respond forthwith.

Sincerely,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

House Judiciary
May 2, 1977

The meeting was called to order at 3:45 p.m. by Chairman, Gardiner. Members present were Gardiner, Rudd, Dankworth and Carpenter. Brown came late. Miles and Eliason were absent.

Mr. Dankworth welcomed Mr. Carpenter as the new member of the committee.

HB 278 Geographic cost of living differentials for judicial officers HB 278

Gardiner reminded the committee that they had already agreed to delete section 4 of this bill when it had been considered previously.

Art Snowden and Susan Burke from the Court System were here to answer questions about the bill.

Brown recommended that if this bill were to leave committee, that a committee report accompany it so that this bill is not considered to be a repealer of the salary commission recommendations. The salary commission has set a base pay and this deals only with a cost of living differential, but Brown still thought that a committee report would be wise to attach to the bill.

Mr. Dankworth moved that HB 278 be moved out of committee. The motion carried and this was done.

SB 12 Number of superior court judges and district court judges SB 12

Art Snowden from the Court System was here to speak against the bill. The Court System doesn't feel that another judge is needed in Ketchikan. They feel that there is ample personnel to handle the work load in Ketchikan now. Mr. Snowden indicated that if anything is done on this, the original version of the bill would be more desirable in that it would give the Court System another judge who could be placed in an area where there appears to be a need, but they really do not sense a need in Ketchikan at this time.

The meeting was adjourned at 4:10 p.m.

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : February 23, 1977

FROM: Merle Martin MPM
Manager of Technical Operations

SUBJECT: Replacing a District Court Judge in Ketchikan with a Superior Court Judge

Attached is the analysis you requested. I do not recommend proposed replacement.

cc: James D. Babb, Jr.
Leanne Culp

Adm. F-1
Rev. 2-73

Replacing a District Court Judge in Ketchikan With an Additional Superior Court Judge

Methodology: We used a case weighting model for this analysis. Case weighting has been used extensively in California, Washington, and in the Alaska Court System to evaluate judicial requirements. The model computes judges required by applying the following formula.

$$\text{Judges Required} = \frac{\text{Bench Minutes Required per Year to Dispose of all Cases}}{\text{Bench Minutes Available Per Judge Per Year}}$$

In computing Bench Minutes Available Per Year, we have used data gathered in Anchorage that compiled bench time by type of case by where the case was disposed of (e.g., trial). We have added 15 percent to the Anchorage figures to reflect economics of scale in the larger courts in Anchorage that do not exist in the smaller courts of Ketchikan.

In computing Bench Minutes Available Per Year, we used the same computations as done in the National Center for State Court study of the King County District Courts. We departed from this study for the following variables specific to Alaska.

1. We deducted an additional five days per year for judicial conferences, continuing education outside the state, etc.

2. We included an allowance for travel to reflect the "circuit riding" nature of our judges. Judge Keene's travel to other First Judicial Districts courts is necessitated when trials occur at magistrate's posts and when Judge Williams is challenged in Juneau. Judge Schultz's travel is more extensive and more outside his district.

3. The King County Study used a figure of five hours per day on the bench. However, the administrative structure supporting those judges was extensive. We have used 4 1/2 hours in the District Court and 4 hours in the Superior Court. The lower Superior Court figure reflects the greater complexity of cases in that court. The American Bar Association standards are 20 hours per week or four hours per day.

Results: 81 percent of a District Court judge's time and 72 percent of a Superior Court judge's time are required in Ketchikan. These figures are conservatively low in that the assumption of a six percent calendaring slack (calendaring inefficiency) is ideally low. If calendaring slack is higher, then more judge time will be needed. However, for the purpose of this analysis it is important to note that, in any case, a greater proportion of a District Court judge's time is needed than for a Superior Court judge.

Conclusion: It would not seem advisable to replace the District Court judge at Ketchikan with a Superior Court judge because:

1. The new Superior Court judge would have to spend more than 80 percent of his time on District Court matters; and

2. The current Superior Court judge position requires not even three-quarters of a Superior Court judge's time.

Recommendations: If it has been determined that a Superior Court judge in Ketchikan is not optimally available to hear all matters, then Judge Schultz's travel time to other courts should be decreased.

Section A. District Court Judges Required

Judge Minutes Available: Table A-1 provides this computation. There are 49,140 District Court bench minutes available per year in Ketchikan.

Bench Minutes per Case: Table A-2 shows the result of the Anchorage Bench Time study. The last column increases average time by 15 percent to reflect the processing economies expected in larger courts but not present in smaller courts.

Maximum Dispositions: In the long run, we cannot expect a court to dispose of more cases than are filed. Table A-3 shows filings by case type in the Ketchikan District Court in 1976. The maximum disposition we can expect, then, is the numbers of cases filed (3598).

Bench Minutes Required: Tables A-4 through A-7 compute bench minutes required for the four types of District Court cases. Each table comprises the same format which includes:

Column (1) - The particular stages at which a case can terminate. The more advanced the stage of disposition (e.g., trial), the more bench time that can be expected to be expended.

Column (2) - Percent of 1976 dispositions that were terminated at each stage.

Column (3) - The percentages in Column (2) applied to the total cases filed (maximum disposition) in 1976. Thus in Table A-4, Column (2) shows 63 percent of 1976 misdemeanors were terminated at the arraignment stage. Maximum disposition for misdemeanors was 896. 896 times 0.63 equals the 564 cases shown for arraignment in Column (3).

Column (4) - Average time for disposition taken from the right hand column of Table A-2.

Column (5) - Total Bench Minutes required computed by multiplying each row in Column (3) by its counterpart in Column (4).

Judges Required: Table A-8 sums the computed bench minutes required in Tables A-4 through A-7. A total of some forty thousand bench minutes are required. Referring to Table A-1, we see that there are 49,140 judge bench minutes available per year in the Ketchikan District Court. Dividing bench minutes required by bench minutes available, we see that 0.81 district court judges are required. Stated another way, 81 percent of a District Court judge's time is required to process District Court matters in Ketchikan.

Table A-1

Computation of Judge Minutes Available per Year Ketchikan District Court

1.	Court Days per Year		/250/ [1]
2.	Deductible Days		
	a. Annual Leave [2]	/30/	
	b. Sick Leave	/3/	
	c. Conferences, outside travel, etc.	/5/	
	d. Travel [3]	/15/	
	e. Allowance for calendaring [4]	/15/	
	f. Other	/ /	
	g. Total Deductible Days		/68/
3.	Judge Days Available		/182/
4.	Judge Minutes Available [5] (Item 3 times 270)		/49140/

1/ Reference "Administrative Analysis of the King County District Courts," NCSC, 8/28/75 pp. 144, 145.

2/ Judge Keene has 10 years service.

3/ Minimum travel 6 days; moderate travel 15 days; heavy travel 30 days.

4/ Case settings, continuances, etc.--6% as shown in the King County Study (see 1/ above).

5/ Assuming 4-1/2 bench hours, or 270 minutes per day.

Table A-2

Bench Minutes in the Anchorage District Court

Type Case	Termination Stage	% Cases At This Stage	Average Time (Min.)	15% Leeway
Misdemeanor	1. Prior to First Appearance	5%	3.8	4.4
	2. Arraignment	43%	4.6	5.3
	3. Prior to Completion of Trial	47%	15.2	17.5
	4. Trial	5%	251.8	289.6
	Total	100%	21.4	24.6
Civil	1. Prior to Answer	66%	0.3	0.3
	2. Prior to Completion of Trial	15%	0.9	1.0
	3. Trial	19%	33.8	38.9
	Total	100%	6.6	7.6
Traffic	1. Prior to First Appearance	43%	0.1	0.1
	2. Arraignment	53%	2.0	2.3
	3. Prior to Completion of Trial	2%	4.6	5.3
	4. Trial	2%	29.5	33.9
	Total	100%	1.9	2.2
Felony	1. Prior to First Appearance	7%	1.6	1.8
	2. Arraignment	3%	6.5	7.5
	3. Preliminary Hearing	12%	48.3	55.5
	4. Prehearing--Resolved in District Court	59%	15.2	17.5
	5. Prehearing--Superceded by Indictment	19%	9.7	11.2
	Total	100%	17.1	19.7

Table A-3

Maximum 1976 Dispositions
(Filings) for Ketchikan District
Court

Felony	64
Traffic	2,354
Misdemeanor	895
Civil	284
Total:	3,598

Table A-4

Misdemeanor Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to First Appearance	.04	36	4.4	158.4
Arraignment	.63	564	5.3	2,989.2
Prior to Completion of Trial	.28	251	17.5	4,392.5
Trial	.05	45	289.6	13,032.0
Total	1.00	896	-	20,572.1

Table A-5

Felony Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to First Appearance	.13	8	1.8	14.4
Arraignment	.02	1	7.5	7.5
Preliminary Hearing	.27	17	55.5	943.5
Prehearing--Resolved in District Court	.35	22	17.5	385.0
Prehearing--Superceded by Indictment	.23	16	11.2	179.2
Total	1.00	64	-	1,529.6

Table A-6

Traffic Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to First Appearance	.33	777	0.1	7.8
Arraignment	.44	1,036	2.3	2,382.8
Prior to Completion of Trial	.05	118	5.3	625.4
Trial	.18	423	33.9	14,339.7
Total	1.00	2,354	-	17,355.7

Table A-7

Civil Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Prior to Answer	.79	224	0.3	67.2
Prior to Completion of Trial	.17	49	1.0	49.0
Trial	.04	11	38.9	427.9
Total	1.00	284	-	544.1

Table A-8

Ketchikan District Court
Judges Required

Type Case	Bench Minutes Required	Judges Required*
Misdemeanor	20,572.1	0.42
Felony	1,529.6	0.03
Traffic	17,355.7	0.35
Civil	544.1	0.01
Total	40,001.5	0.81

*Bench Minutes Required divided by 49,140 Judge Minutes Available (Table A-1).

Section B. Superior Court
Judges Required

Judge Minutes Available: Table B-1 provides this computation. The criterion of only four hours a day on the bench for a Superior Court judge is consistent with ABA standards of 20 hours per week. More hours off the bench are required for Superior Court judges because of the greater complexity of cases handled. This greater complexity leads to more extensive and complex motion practice and review. There are 40,080 Superior Court bench minutes available per judge per year in Ketchikan.

Bench Minutes per Case: Table B-2 shows the result of the Anchorage Bench Time Study. The last column increases Anchorage time by 15 percent to reflect processing economies expected in larger courts but not present in smaller courts.

Maximum Disposition: Table B-3 shows that, had all 1976 cases filed been disposed of, we would have had a maximum of 550 Superior Court dispositions at Ketchikan in 1976.

Bench Minutes Required: Tables B-4 through B-8 provide the same computations as explained for Tables A-4 through A-7. The only difference is in Probate cases and Children's Matters which are unique in nature. In these cases, times vary more by type of case than by the stage where the case is terminated.

Judges Required: Table B-9 shows computed bench minutes required in Tables B-4 through B8. Some 30,000 bench minutes are required. This represents 72 percent of a Superior Court judge's time.

Table B-1

Computation of Judge
Minutes Available per Year
Ketchikan Superior Court

1.	Court Days per Year		/250/ [1]
2.	Deductible Days		
	a. Annual Leave [2]	/30/	
	b. Sick Leave	/3/	
	c. Conferences, outside travel, etc.	/5/	
	d. Travel [3]	/30/	
	e. Allowance for calendaring [4]	/15/	
	f. Other	/ /	
	g. Total Deductible Days		/83/
3.	Judge Days Available		/167/
4.	Judge Minutes Available [5] (Item 3 times 240)		/40080/

1/ Reference "Administrative Analysis of the King County District Courts," 8/28/75 pp. 144, 145.

2/ 30 for Superior Court judges.

3/ Minimum travel 6 days; moderate travel 15 days; heavy travel 30 days.

4/ Case settings, continuances, etc.--6% as shown in the King County Study (see 1/ above).

5/ Assuming 4 bench hours, or 240 minutes per day.

Table B-2

Bench Minutes in the Anchorage Superior Court

Type Case	Termination Stage	% Cases At This Stage	Average Time (Min.)	15% Leeway (Min.)
Felony	1. Arraignment	5%	108.9	125.2
	2. Pretrial	83%	79.3	91.2
	3. Trial	8%	787.8	906.0
	4. Other	4%	43.5	50.0
	Total	100%	136.0	-
Domestic Relations	1. Trial	57%	39.5	45.4
	2. Other	43%	5.7	6.6
	Total	100%	25.0	-
Probate	1. Adoption	34%	11.4	13.1
	2. Estates	30%	13.2	15.2
	3. Guardianships	1%	30.5	35.1
	4. Conservatorships	19%	15.3	17.6
	5. Sanity	16%	39.7	45.7
	Total	100%	17.4	-
Other Civil	1. Before Answer	65%	4.1	4.7
	2. Pretrial	27%	7.3	8.4
	3. Trial	8%	528.3	607.5
	Total	100%	47.0	-
Children's Matters	1. Dependency	14%	55.9	64.3
	2. Delinquency	86%	60.8	69.9
	Total	100%	60.1	-

Table B-3

Maximum 1976 Dispositions (Filings) for Ketchikan Superior Court

Felony	33
Domestic Relations	249
Probate	76
Other Civil	80
Children's Matters	112
Total:	550

Table B-4

Felony Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Arraignment	.23	7	125.2	876.4
Pretrial	.48	16	91.2	1,459.2
Trial	.20	7	906.0	6,342.0
Other	.09	3	50.0	150.0
Total	1.00	33	-	8,827.6

Table B-5

Domestic Relations Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Trial	.48	120	45.4	5,448.0
Other	.52	129	6.6	851.4
Total	1.00	249	-	6,299.4

Table B-6

Probate Bench Minutes Required

(1) Type Case	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Adoption	.37	28	13.1	366.8
Estates	.41	31	15.2	471.2
Guardianship	.01	1	35.1	35.1
Conservatorship	.11	8	17.6	140.8
Sanity	.10	8	45.7	365.6
Total	1.00	76	-	1,379.5

Table B-7

Other Civil Bench Minutes Required

(1) Termination Stage	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Before Answer	.73	58	4.7	272.6
Pretrial	.18	15	8.4	126.0
Trial	.09	7	607.5	4,252.5
Total	1.00	80	-	4,651.1

Table B-8

Children's Matters Bench Minutes Required

(1) Type Case	(2) % of 1976 Dispositions at that Stage	(3) Projected 1976 Cases at that Stage	(4) Average Time for Disposition	(5) Total Bench Minutes Required
Dependency	.06	7	64.3	450.1
Delinquency	.94	105	69.9	7,339.5
Total	1.00	112	-	7,789.6

Table B-9

Ketchikan Superior Court
Judges Required

Type Case	Bench Minutes Required	Judges Required*
Felony	8,827.6	0.22
Domestic Relations	6,299.4	0.16
Probate	1,379.5	0.03
Other Civil	4,651.1	0.12
Children's Matters	7,789.6	0.19
Total	28,947.2	0.72

*Bench Minutes Required divided by 40,080 Judge Minutes Available (Table B-1).

SB

151

157

P7

February 11, 1977

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to tort claims against the state.

The bill would amend AS 09.50.250 dealing with actionable claims against the state. (Also see art. II, sec. 21 of the Alaska Constitution). Specifically, the bill would bar claims against the state arising out of motor vehicle accidents based upon the design of a state highway if the design conforms to applicable design standards. It also would bar claims arising out of motor vehicle accidents based upon the maintenance of a state highway unless the state had actual notice of a dangerous condition and had the capability to correct it. Finally, it would bar claims based on state inspection of (or failure to inspect) property not actually owned or controlled by the state for hazards or safety violations.

Specifically, this bill would bar suits arising out of a motor vehicle accident based on the design of a state highway (including the placement of warning or safety signs or markings on or along the highway) when that design conformed with the uniform design standards adopted by the Department of Highways pursuant to statutory authority and in effect at the time the design was prepared. It would also bar suits arising out of a motor vehicle accident based on the maintenance (or lack of it) of a state highway unless (1) an

employee of the state responsible for road maintenance at the place of the accident had actual notice of a dangerous road condition which required maintenance at the scene of the accident, (2) a reasonable man under similar circumstances would have taken steps to correct that dangerous condition, (3) there was adequate opportunity for the state to perform the required maintenance within the constraints of available time, personnel and equipment, and (4) the dangerous condition was a substantial contributing cause of the accident. The effect of these provisions would be the establishment of reasonable statutory standards of care to which the state must conform. State actions meeting the standards established would, by definition, be reasonable and would not give rise to state liability; state actions not meeting those standards would leave the state liable for resulting damages to the same extent it is so under existing case law.

The bill would also preclude state liability based on state inspection of (or failure to inspect) private property for violations of statutes, regulations or ordinances and/or health or safety hazards. This provision is prompted directly by the Alaska Supreme Court's decisions in Adams v. State, 555 P.2d 235 (Alaska 1976), in which the court held that the state was under a duty to abate fire hazards on private property discovered pursuant to an inspection, and Wallace v. State, ____ P.2d ____, (Alaska Sup. Ct. Op. No. 1352 - December 29, 1976), in which the court held that the state was under a duty to abate a hazardous working condition on an industrial job site.

The court specifically held that the conduct of such inspections, once the basic policy decision to inspect property has been made, requires no discretion, and therefore the state may be liable for injuries resulting from violations or hazards not discovered or not abated if discovered. The clear implication is that the choice of remedial measures, if violations or hazards on private property are discovered, is not a discretionary decision.

I firmly believe that the state must be given wide latitude in the measures it adopts to protect public health and safety. Particularly where the state's

ability to discover and abate health and safety violations and hazards on private property is limited by budgetary and other fiscal constraints, imposing liability when the state conducts an inspection places the state in an untenable position: the responsible state official must choose either not to inspect at all or to inspect and thereby expose the state to potential liability for any injuries resulting from violations or hazards, whether discovered or not.

The deployment of inspectors throughout the state, the selection of things to be inspected, the thoroughness with which inspections are conducted, and the remedial measures suggested or required if violations or hazards are discovered all involve discretionary decisions. These decisions involve a balancing of the available resources and manpower, the number of things to be inspected, the potential danger to the public health and welfare from undiscovered violations or hazards, and the potential economic and social consequences of invoking a wide variety of possible remedial measures. Subjecting the state to potential liability through judicial second-guessing any time injuries result from violations or hazards on private property which could have been discovered and/or abated is having the following consequences: either inspections of private property will not be made (except where a statute clearly requires it) or the most severe remedy available will be invoked even in marginal cases. Neither of these consequences is in the public interest; more significantly, the discretionary latitude necessary to create appropriate solutions to specific real problems is eliminated.

Normally I do not approve of legislation further limiting the state's tort liability since I strongly believe that the state must be as responsible for its actions as a private citizen when those actions result in personal injury or property damage. However, several recent court decisions at both the trial and appellate levels suggest that the judiciary is going beyond traditional negligence concepts when the state is a defendant, and is approaching the point where the state will be strictly liable for damages resulting from accidents in which the state has only minimal involvement. Both practical and policy considerations require that the legislature clarify and define the limits of state liability.

The most obvious practical effect of expanding state

liability has been a dramatic increase in the cost of the state's liability insurance, coupled with a decrease in actual coverage. While both inflation and the nationwide tendency toward jury verdicts exceeding $1,000,000 are also responsible for the increased cost of insurance, judicial expansion of state liability certainly is a substantial factor.

More fundamentally, I believe that the courts are assuming the legislature's responsibility to establish and define the limits of state liability. Art. II, sec. 21 of the Alaska Constitution provides that "[t]he legislature shall establish procedures for suits against the State." (Emphasis added.) Pursuant to this section, the legislature enacted AS 09.50.250 defining the limits of state liability, and exempting the state from liability for "discretionary acts." While I agree with the Supreme Court's recent statement that the current law of sovereign immunity in Alaska is that "liability is the rule, immunity the exception" (Adams v. State, 555 P.2d 235, 244 (Alaska 1976)), I fear that the legislative determination that one such exception should encompass discretionary acts by the state is slowly being undermined by judicial decisions giving the words "discretionary acts" an artificially narrow construction not intended by the legislature.

I am also disturbed by the fact that there are no established standards of care for those situations where the state should be liable if it is negligent. This permits a court to determine the reasonableness of state actions after the fact. It is imperative that the legislature reestablish its position as the branch of government responsible for determining what situations may give rise to state liability and the standard of care to which the state will be held in those situations.

I firmly believe that society rather than the injured individual should bear the cost of the state's negligence. However, this policy of risk-spreading should be confined to those situations in which the state is clearly under a duty to act and where its failure to perform its duty was a substantial contributing cause of the injury. The state cannot, and should not, bear the cost of every injury with which the state has some

connection. This bill would place reasonable statutory limits on state liability, permitting recovery where the state really is at fault but preventing recovery when the state is only minimally involved.

Sincerely,

Jay S. Hammond
Governor

SB 151 file

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K—STATE CAPITOL
JUNEAU 99811

May 12, 1977

The Honorable Terry Gardiner, Chairman
The Honorable Fred E. Brown
The Honorable Larry Carpenter
The Honorable Ed Dankworth
The Honorable Richard I. "Dick" Eliason
The Honorable Bill Miles
The Honorable Lisa Rudd, Members,
House Judiciary Committee
Tenth Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 151
Tort Claims Against the State of Alaska
Our File: J-77-036-77

Dear Members of the House Judiciary Committee:

In my testimony on May 3, 1977 before the House Judiciary Committee regarding SB 151, Tort Claims Against the State of Alaska, I felt that there was some misunderstanding of the underlying intent and potential effect of this bill.

We believe the state should be liable at any time the state's negligent conduct causes a private injury, and SB 151 would not preclude state liability when the state's negligent conduct resulted in private injury. It would do the following: (1) establish a legislative standard of non-negligent "reasonable care" to be applied in actions based on the design or maintenance of a state highway; (2) preclude state liability based on state inspection of, or failure to inspect, private property for violations of statutes, regulations or ordinances and/or health or safety hazards; and, (if amended as I requested in my testimony) (3) preclude state liability when the basis of the cause of action is that the state licensed the private individual or private conduct which resulted in the injury.

We believe a statutory standard of reasonable care in highway cases is necessary because there is no such standard at present. In every case, the jury is required to determine -- after the fact -- if the design or maintenance of the highway was reasonable. The standard of reasonable care which would be established by SB 151 for highway design is conformance with applicable nationally recognized uniform standards in effect at the time the design was prepared. Regarding highway maintenance, the state would be liable if (1) it had notice of the hazardous condition requiring maintenance; (2) a reasonable man would take steps to correct that condition; (3) the state was able to correct the condition and did not, and (4) the condition was a substantial contributing cause of the accident. We believe these provisions would establish a fair standard of "reasonable care" in highway cases. As I suggested in my testimony, the lack of an objective standard leads to a floating standard of care. What one jury sees as "reasonable" another jury may see as not "reasonable," and the state's conduct is always subject to second-guessing.

The bill also would bar suits based on a failure of the state, where the state is neither owner nor tenant of the property involved, (1) to inspect for statutory violations or hazards; (2) to discover a statutory violation or hazard; or (3) to abate any such violation or hazard. In determining whether or not the state should be immune from these acts or omissions, we believe you must make a fundamental policy determination of precisely what the state's role is when it becomes involved in inspecting for hazards. One approach is that the state inspects for hazards to try to minimize the dangers that state citizens encounter in using private facilities which are subject to state inspection; that is, the state is attempting to ensure that the public is not exposed to an unreasonable risk of harm, recognizing that not all dangers can be totally eliminated. The other approach is that the state inspects for hazards to guarantee the safety of the property inspected. That is, if the property is inspected and violations are not discovered or not abated if discovered, the state is liable for post-inspection injuries much like an insurance company. We believe the state's safety inspection program is designed to minimize the dangers state citizens are exposed to. We do not believe that the state should be guaranteeing the safety of non-state, privately-owned property. The owner of the private property, the individual responsible for maintaining dangerous or hazardous premises and inviting the public to use them, is the one who should be liable for injuries resulting from those hazards or dangers. All of the people -- the citizens and taxpayers of the state -- should not have to pay for the wrongs of a few individuals.

If inspection procedures are inadequate, they should be changes. If inspectors are incompetent, new ones should be hired. But making the state liable for private hazards simply because the state had the opportunity to inspect will not improve the quality of inspectors or inspections. If anything, it will have the opposite effect: the number of inspections will be minimized because liability may result. It may have a negative effect on public safety as well: private property owners will rely on the state to make their property safe and disclaim personal responsibility for their own wrongs. Finally, the impact on state finances is obvious: large dollar judgments against the state needlessly divert state resources which could be spent elsewhere with greater public benefit. I say "needlessly" because the whole concept of state liability based on inspections misses the basic point that the private property owner is the one who should bear the consequences of maintaining a hazardous condition and compensate innocent victims. They are not without a remedy.

Finally, we urge you to amend SB 151 to include a new paragraph to read:

> (6) is based on the grant, issuance, refusal, extension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a re-zoning.

This provision appears in the recent municipal immunity bill passed by both houses and currently awaiting the Governor's signature. While the state has not yet been held liable because it issued a license or permit, it is conceivable that it will be held liable in the future, particularly since municipalities may soon be immune from liability based on the issuing of a license or permit. Liability would not be automatic; however, the state would have to prove that its licensing and permit issuing procedures are "reasonable." The procedures used for licensing drivers, physicians, etc., and issuing permits for using high explosives, transporting extra-wide loads on state highways, etc., all are designed to provide a certain amount of oversight of activities which may endanger the public. They are not designed to guarantee that dangerous activities will not be dangerous; that is impossible without the expenditure of incredible sums of money, and even then, nothing is guaranteed. Decisions regarding the procedures to be used in issuing licenses and permits include the time and manpower available to evaluate applicants, the feasibility of evaluating applicants actually performing the tasks for which they will be licensed, the need for a permit and the consequences of not granting one, etc. In any jury trial, the jury will be required to make

an after-the-fact determination regarding the reasonableness of the procedures involved. Particularly where the plaintiff evokes a great deal of sympathy from the jury, it may be next to impossible to prove that the procedure employed was "reasonable," and that the state should not be liable for injuries caused by an individual licensed or permitted by the state to engage in the activity which led to the injury.

The legislature has already given immunity to municipalities in suits based on the inspection of private property and the issuing or denial of licenses and permits. If such immunity is not given to the state, principles of statutory construction almost certainly would lead to the conclusion that the legislature intended that the state could be found liable in such cases. If you would prefer to leave a floating standard of "reasonable care" in highway cases, the bill could be amended by removing that section. However, we urge passage of SB 151 with the amendment for causes of action based on licenses or permits. We believe that, by not passing SB 151 with the amendment, the legislature is saying that the state guarantees inspected property is not hazardous, licensed professionals are competent, and activities for which permits have been issued are safe, and the state will pay for resultant injuries when those statements are not true.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:jec

cc: Fran Ulmer

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____

Title An Act Relating to Tort Claims Against the State of Alaska

Requested by Governor Hammond Date 2/7/77

II. FISCAL DETAIL

Agency Affected All

Program Category Affected _____

Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The State receives up to 25 suits per year pertaining to highway maintenance and design. Of those suits 15-20 would be defensable by virtue of the standards of negligence outlined in this bill. Hopefully the clear defense available to us will eliminate the need to defend these suits thus saving $300,000 to $500,000 in attorney costs. The State retains a significant amount of self insurance which applies to claims treated by this bill. Reestablishment of traditional liability standards could result in annual savings in excess of an estimated 1.5 million dollars.

IV. DATE February 8, 1977 PREPARED BY John George

AGENCY General Services & Supply

PHONE 465-2283

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

Introduced: 2/11/77
Referred: Judiciary

THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 151

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to tort claims against the State of Alaska; and providing for an effective date."

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

* Section 1. AS 09.50.250 is amended by adding new paragraphs to read:

(4) arises out of a motor vehicle accident and is based upon

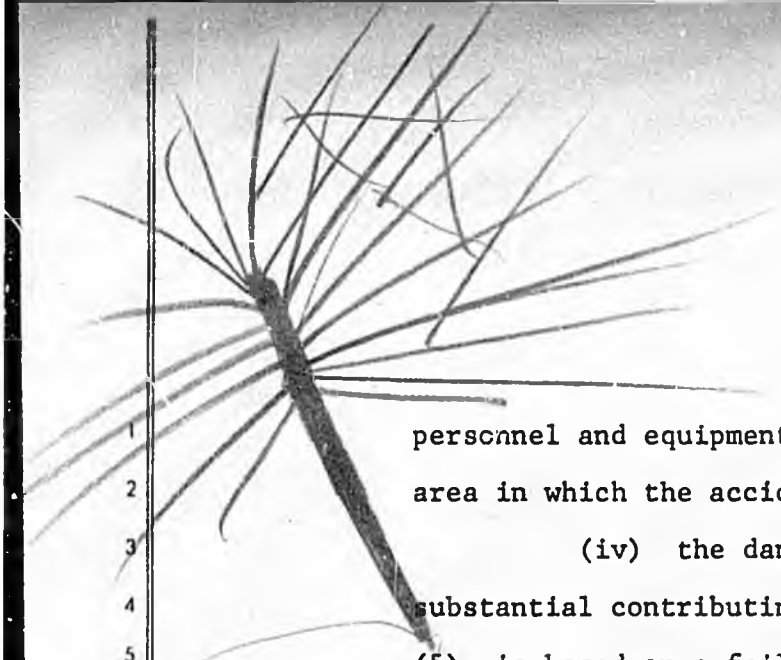
(A) design of a state highway, including the placement of warning or safety signs or markings on or along the highway, when the design conformed to nationally recognized uniform standards as adopted by the Department of Highways under AS 19.10.040, 19.10.050, or AS 19.10.160 for the system of which the highway involved is a part and in effect at the time the design was prepared; or

(B) maintenance of a highway unless

(i) an employee of the state who had the responsibility for road maintenance at the place of the accident had actual notice of a dangerous road condition which required maintenance at the scene of the accident;

(ii) a reasonable man under similar circumstances would have taken steps to correct the dangerous condition of the highway at the place of the accident;

(iii) there was adequate opportunity for the state to render the maintenance service, considering the length of time in which the state had actual notice, and the



An Act of God

personnel and equipment capabilities of the state for the area in which the accident occurred; and

(iv) the dangerous condition of the road was a substantial contributing cause of the accident;

(5) is based on a failure of the state, where the state is neither owner nor tenant of the property involved,

(A) to inspect property for a violation of any statute, regulation, or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made;

(C) to abate a violation of any statute, ordinance, or regulation, or a hazard to health or safety discovered on property inspected.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c) and applies to all legal actions filed after the effective date of this Act.

1. gross negligence

Amend SB299 — gross negligence

John -

Carl
Gordon Hannon
- Dave Jeffries
$ 5500

Chattin - SB 151 fib.
Sovereign Immunity

passed Senate in our committee

amendments will be sent to you from Gov. Office - copy for your file

House Judiciary
May 3, 1977

The meeting was called to order at 3:55 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Brown and Rudd. Mr. Dankworth, Mr. Eliason and Mr. Carpenter came late.

SB 12 Number of superior court and district court judges SB 12

Senator Ziegler was here to speak in support of SB 12 for which he is a sponsor. He explained the existing problem as being that Ketchikan's Judge Schultz is frequently called to Anchorage leaving Ketchikan without a judge. Sen. Ziegler would like to see a superior court judge in Ketchikan at all times.

Senator Ziegler requested that the committee put this bill in the drawer for now. He said that he will carefully monitor the superior court position in Ketchikan between now and next year, and may ask that the bill be reconsidered next year if he senses the need.

The committee agreed to set the bill aside for now.

SB 151 Tort claims against the State of Alaska SB 151

Gardiner briefly explained why he hade brought this bill up before the committee.

Tom Koester from the Attorney General's office was here to support the bill, which is an administration bill.

Brown moved that consideration of SB 151 be postponed indefinately. Gardiner explained that a committee could not do this, as it would kill the bill for this year. Brown changed his motion to table the bill. The motion to table the bill failed.

There was a very legthy, involved discussion after which the committee decided not to do anything with the bill at this time.

The meeting was adjourned at 5:00 p.m.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 12, 1977

MEMORANDUM

TO: Representative Terry Gardiner

FROM: Fran Ulmer

SUBJECT: Amendment to SB 151

It has come to our attention that Senate Bill 151 regarding limitation of tort claims against the State needs an additional provision to protect the State from claims arising out of the issuance of licenses and permits. This provision would be identical to the protection afforded municipalities in HB 354/SB 249. When the State licenses individuals (occupational licenses, drivers licenses, etc.), it does not assume the responsibility of ensuring that the licensee will perform adequately at all times. That is, the State does not stand behind every driver that holds a license to drive in Alaska or every doctor certified to practice medicine in the State. However, the Supreme Court's recent tort decisions could lead to such a conclusion. Furthermore, principles of statutory construction would almost certainly lead to that conclusion if municipalities are given such immunity and the State is not.

The addition on Page 2 should read "(6) is based on the grant, issuance, refusal, suspension, delay, or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;".

Thank you for considering this request.

~~3945~~

Lloyd Hough
364-2121
ext 236

SB 151

James
Zakin —
Please call when
this bill comes
before Committee.