

H

B

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3

COMMITTEE REPORT

SENATE

5/18/82

FURTHER: None

Date:

June 1, 1982

Mr. President:

The Committee on JUDICIARY has had HE 633

prohibiting personal recognizance release when the offense charged is a violent crime

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HE 633 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Robert Anderson No Rec

CHAIRMAN

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree

AS 11.41.100

20-99 years

Murder in the Second Degree

AS 11.41.110

5-99 years

Kidnapping

AS 11.41.300

5-99 years

CLASSIFIED FELONIES

2-2

A	B	C
Attempted Murder or Kidnapping AS 11.31.100(d) (1)	Attempted A felony AS 11.31.100(d) (2)	Attempted B felony AS 11.31.100(d) (3)
Solicitation of Murder or Kidnapping AS 11.31.110(c) (1)	Solicitation of A felony AS 11.31.110(c) (2)	Solicitation of B felony AS 11.31.110(c) (3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Custodial Interference I AS 11.41.320
Sexual Assault I AS 11.41.410	Unlawful Exploitation of a Minor AS 11.41.455	Sexual Assault III AS 11.41.430

CLASSIFIED FELONIES

A	B	C
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual Abuse of a Minor AS 11.41.440
Arson I AS 11.46.400	Extortion AS 11.41.520	Incest AS 11.41.450
Escape I AS 11.56.300	Theft I AS 11.46.120	Coercion AS 11.41.530
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b) (1)	Issuing a Bad Check, \$25,000 or more AS 11.46.280 (d) (1)	Theft II AS 11.46.130
	Burglary I AS 11.46.300	Concealment of Merchandise, \$500 or more AS 11.46.220 (c) (1)
	Arson II AS 11.46.410	Removal of Identification Marks, \$500 or more AS 11.46.260 (b) (1)
	Criminal Mischief I AS 11.46.480	Unlawful Possession (of Altered Property), \$500 or more AS 11.46.270 (b) (1)
	Forgery I AS 11.46.500	Issuing a Bad Check, \$500 or more AS 11.46.280 (d) (2)
	Scheme to Defraud AS 11.46.600	Fraudulent Use of a Credit Card, \$500 or more AS 11.46.285 (b) (1)
	Defrauding Creditors, \$25,000 or more AS 11.46.730 (c) (1)	

2-3

COATS, Judge, concurring.

I agree with the majority that the equal protection clause requires that legislation which restricts bail pending appeal must treat people who are similarly situated similarly. I also agree that the proper test for this court to apply in evaluating such legislation is the rational basis test. I would emphasize, however, that in my view, the equal protection clause does allow the legislature a considerable amount of discretion in determining which offenses should give rise to the right to bail. However, having said that, I have a great deal of difficulty justifying the legislature's decision to restrict bail pending appeal after a conviction for robbery in the first degree while allowing bail pending appeal after a conviction for murder in the second degree. Therefore, I concur in the decision.

distinguishes between violent and dangerous offenders similarly situated, violates the Alaska Constitution as well as the United States Constitution. The legislature may certainly deny post-conviction bail to dangerous offenders, but if it does so, it must act in an evenhanded manner.

This case is reversed and remanded for the limited purpose of providing a bail hearing to Mr. Griffith. We express no opinion regarding how AS 12.30.040(a) should be applied to this case, nor do we express any opinion regarding an appropriate bail or the appropriate conditions of any possible release. The limited remand shall not be deemed a postponement of any obligation of any party in connection with the appeal now pending on the merits.

REVERSED and REMANDED.

Alternative methods which standardize the burden are available and have been upheld elsewhere.⁹

To complete this analysis, the importance of the state's interest in denying persons convicted of first degree robbery, first degree murder, kidnapping, or rape the chance for post-conviction bail must be weighed against the rights allegedly infringed by such state action. The considerations are substantial in both directions. On the one hand, there is no right to bail pending appeal under the Alaska Constitution. State v. Wassillie, 606 P.2d 1279 (Alaska 1980). On the other hand, the significance of bail prior to conviction is well-recognized, and many of the same factors in that situation are pertinent to the person who has been convicted. These include the possibility of wrongful detention, the loss of income, the diminution of investigation opportunities, and the impairment of the family relationship. See Carman v. State, 664 P.2d 361, 364 n.10 (Alaska 1977). Consequently, we conclude that AS 12.30.040(b), to the extent that it

9. In other jurisdictions which have upheld bail pending appeal statutes, all crimes of a class, which were otherwise treated with equal severity, were included in the statute. See, e.g., United States ex rel. Fink v. Heyd, 287 F.Supp. 716 (E.D. La. 1968), cert. denied, 396 U.S. 895, 24 L.Ed.2d 172 (1969)(state provision which effectively denied bail to all persons convicted of a felony and sentenced to at least five years in prison upheld); Gold v. Shapiro, 403 N.Y.S.2d 906 (App. Div. 1978), aff'd, 410 N.Y.S.2d 68 (1978)(post-conviction denial of bail provision held constitutional where entire subclass of drug felons treated equally). Similarly, the Supreme Court of Alaska has upheld differential class treatment of prison escapees where all members of the class received identical treatment. Alex v. State, 484 P.2d 677 (Alaska 1971).

state interest in the chosen means must be balanced against the nature of the constitutional right involved.

State v. Erickson, 574 P.2d 1, 12 (Alaska 1978)(footnotes omitted). In essence, then,

We apply a single test which is nevertheless flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden is placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective.

Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d at 1264 (footnote omitted).

There is no dispute between the parties concerning the purpose of the post-conviction bail statute. However, we do not find that that statute bears "a fair and substantial relation to the object of the legislation." Isakson v. Rickey, 550 P.2d at 362. It has already been pointed out that many persons who are convicted of crimes not listed within AS 12.30.040(b) present as great a risk of nonappearance and of community harm as do those named within the statute.

A careful limitation on bail to dangerous convicted persons is indeed rationally related to the legislative purposes of continued appearance and community protection. Nevertheless, the selective means instituted by the legislature are not connected with such goals. The decision to bar someone convicted of first degree robbery from a post-conviction bail hearing, while giving this opportunity to someone convicted of second degree murder, calls for some explanation. None is forthcoming.

B. Whether AS 12.30.040(b) Violates the Equal Protection Clause of the Alaska Constitution

Although it is not a requirement that any classification made by the state be perfect, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d at 1267, it still "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976), citing State v. Wylie, 516 P.2d 142, 145 (Alaska 1973).

Alaska's equal protection approach for statutes not affecting fundamental rights was further explicated by the Isakson court:

[W]e will no longer hypothesize facts which would sustain otherwise questionable legislation as was the case under the traditional rational basis standard. Thus, under the new test

Judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished. Judicial tolerance of over-inclusive and underinclusive classifications is notably reduced. Legislative leeway for unexplained pragmatic experimentation is substantially narrowed.

550 P.2d at 362 (footnote omitted). Operationally, this consolidates the two-tiered federal standard and requires that the court look to the legislature's purpose.

It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the

all class A felonies. Under AS 11.81.250,⁸ these offenses are of equivalent seriousness to robbery in the first degree and to sexual assault in the first degree; yet, persons convicted of the latter crimes may not receive bail pending appeal while persons convicted of the former may. Consequently, we conclude that a legislative scheme which makes bail optional for some dangerous convicts, but which without apparent explanation denies it to others similarly situated, violates the federal constitution.

8. Sec. 11.81.250. Classification of Offenses.

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person

To the extent that it limits its burdens to a part of the class of violent or dangerous offenders, there is little in Alaska's classification scheme that is reasonably or rationally related to the state's purpose in denying the opportunity for post-conviction bail. First, the state offers no substantiation for the proposition that a person who has been convicted of robbery in the first degree is any less likely to continue to appear before the court and to follow its orders than someone who has been convicted of a serious crime not covered within AS 12.30.040(b). While it is true that someone convicted of first degree robbery "will serve a considerable amount of time in prison" and will thus have "an incentive for flight," the same may also be said of someone convicted of a crime such as second degree murder. It would also be true of someone convicted a third time for illegally selling narcotics where the possible punishment is life imprisonment. See AS 17.10.200(c)(3).

Second, the state's argument that the public has a greater need to be protected from persons convicted of an offense within 12.30.040(b) than persons convicted of other egregious acts is not convincing. Indeed, some of these other offenses for which bail is an option have been categorized by the legislature to be as serious as or more serious than some of the offenses within AS 12.30.040(b). Second degree murder is an unclassified offense for which life imprisonment is a potential sentence. Manslaughter, assault in the first degree, and arson in the first degree, for example, are

The state cites a pair of legislative criteria in support of the Alaska provision: (1) assurance of continued appearances and amenability to the further orders of the court, and (2) protection of the community. AS 12.30.040(a). Griffith does not contest the reasonableness of these purposes or contend that the legislature's goals are not being met under AS 12.30.040(b). Rather, he argues that the Alaska Legislature has arbitrarily and completely denied him a benefit (the opportunity for bail) which may be granted to others who are similarly situated.

Courts often have held that such "underinclusion" is not a denial of equal protection. They reason that a legislature may recognize an evil and attempt to eliminate the harm where it is most acute. See, e.g., Williamson v. Lee Optical, Inc., 348 U.S. 483, 99 L.Ed. 563 (1955), reh. denied, 349 U.S. 925, 99 L.Ed. 1256 (1955). Factors such as administrative convenience and the need for experimentation have been advanced in support of this approach. See Tussman and tenBroek, The Equal Protection of the Laws, 37 Cal. L.Rev. 341, 348-49 (1949). The presumption of validity for "underinclusive" legislation has, however, been strongest in cases involving economic regulation. Developments in the Law--Equal Protection, 82 Harv. L.Rev. 1065, 1078 (1969); see, e.g., New Orleans v. Dukes, 427 U.S. 297, 303, 49 L.Ed.2d 511, 516-17 (1976). Accordingly, the United States Supreme Court has invalidated a state law where it found that the classification was based upon a distinction between prisoners which did not bear a reasonable relationship to the purpose of the classification. Rinaldi v. Yeager, 384 U.S. 305, 16 L.Ed.2d 577 (1966)(requirement that prisoner, but not probationer, reimburse state for transcripts held violative of equal protection clause).

Under Alaska law, those convicted of felonies are entitled to bail under the same circumstances and subject to the same conditions as are those defendants awaiting trial unless the court expressly finds that no conditions will insure the defendant's attendance at further proceedings or will prevent him from injuring the public. AS 12.30.040(a). An exception to this rule of general availability of bail to convicted felons is made for those convicted of certain specified crimes including, inter alia, robbery in the first degree, the crime for which Griffith was convicted. AS 12.30.040(b). Thus, under current Alaska law, a person convicted of second degree murder (an unclassified offense), AS 11.41.110, an offense punishable by a sentence of at least five years and perhaps as much as ninety-nine years in prison, AS 12.55.125(b), would be entitled to bail unless the court found reasons not to grant bail. However, a person convicted of first degree robbery (a class A felony), AS 11.41.500, an offense punishable by a term of zero to twenty years,⁷ AS 12.55.125(c), would not be eligible for bail no matter what conclusions the trial court reached regarding the risk he posed of fleeing or of harming others. Is there a rational basis for distinguishing between those convicted of second degree murder and those convicted of first degree robbery in determining the availability of bail?

7. While it is unlikely that anyone convicted of second degree murder would receive the minimum five-year term specified in AS 12.55.125(b), it is possible to commit first degree robbery without becoming subject to the minimum six-year term specified in AS 12.55.125(c)(1).

So too, the "rational basis" test is the relevant one in the instant case. While at least one federal court has noted that "the right to bail is 'fundamental' in that it involves issues of personal freedom in the most immediate and literal sense of those words," United States v. Thompson, 452 F.2d 1333, 1340 (D.C. Cir. 1971) (dictum), cert. denied, 405 U.S. 998, 31 L.Ed.2d 467 (1972), it still is well accepted that the receipt of post-conviction bail is not constitutionally guaranteed. See, e.g., Powers v. Schwartz, 448 F.Supp. 54, 56 (S.D. Fla. 1978), vacated as moot, 587 F.2d 783 (1976); United States ex rel. Bad Heart Bull v. Parkinson, 385 F.Supp. 1265, 1266 (D. S.D. 1974).

A state may, if it chooses, decline to provide a system for post-conviction bail, simply because convicted persons do not have a right to bail pending appeal. See, e.g., In re Podesto, 544 P.2d 1297 (Cal. 1976). "What is required is that where the state has set up a classification of bailable and non-bailable offenses, the classification must not violate the right to due process and equal protection guaranteed by the Fourteenth Amendment." Powers v. Schwartz, 448 F.Supp. at 56. Following the "rational basis" approach,

The applicable test . . . is 'whether the classification is reasonable, possesses some rational connection to the measure's legitimate purpose and treats all within the class alike.' Under this test, legislation is presumed to be reasonable, and any reasonably conceivable facts justifying the classification will be accepted.

Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d at 1262 (footnotes omitted).

permits) under both the fourteenth amendment and the Alaska Constitution. The court noted that, in light of Alaska's differing standard of review in some equal protection cases, the claim needed to be considered separately under both federal and state law. Id. at 1261. The dual analysis of the court in Apokedak will be followed here.

A. Whether AS 12.30.040(b) Violates the Equal Protection Clause of the United States Constitution

In examining the claim presented in Apokedak under the fourteenth amendment, the supreme court first considered whether the classification scheme at issue involved a suspect classification or a fundamental right. The court found that neither were involved and thus used the "rational basis" test, instead of the "strict scrutiny" test,⁶ to assess the state's interest in creating the statutory classifications. Id. at 1261-62.

6. The United States Supreme Court has applied dual standards to equal protection challenges. The state must prove a "compelling state interest" to justify classifications based on race, national origin, or alienage (so called suspect classifications), and such classifications are subject to strict scrutiny. A similar standard is applied when fundamental rights are at stake. There is no general agreement, however, among supreme court justices as to which rights are "fundamental" beyond those found in the first amendment.

In cases not involving suspect classes or fundamental rights, the United States Supreme Court has generally applied the less restrictive rational basis test. Id. at 1261-62.

alleging that it violates the equal protection clauses of the federal⁴ and state⁵ constitutions. We agree and reverse. While Griffith's federal challenge is dispositive, we nevertheless construe the Alaska Constitution as well in the event that intervening federal authority might otherwise require further proceedings.

I. WHETHER AS 12.30.040(b) IS CONSTITUTIONAL UNDER
THE EQUAL PROTECTION LAWS OF THE UNITED
STATES AND OF ALASKA

In Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980), the Supreme Court of Alaska carefully considered an equal protection claim (involving the restrictive granting of fishing

Footnote 3 continued:

(b) Notwithstanding the provisions of (a) of this section, if the offense a person has been convicted of is murder in the first degree, robbery in the first degree, kidnapping, or sexual assault in the first degree under AS 11.41.410(a)(1), he may not be released on bail either before sentencing or pending appeal.

4. U.S. Const. amend. XIV, provides in part that no state may "deny to any person within its jurisdiction the equal protection of the laws."

5. Alaska Const. art. I, § 1, provides in part, "that all persons are equal and entitled to equal rights"

The trial court denied bail in reliance on AS 12.30.040(b).³
In this appeal, Griffith challenges the constitutionality of AS 12.30.040(b)

Footnote 1 continued:

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; any offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time the motion is filed.

(c) The decision of the court of appeals on an application under this rule is a "final decision" within the meaning of Rule 302. (Supreme Court Order 439 effective November 15, 1980)

3. This provision is best understood when read in the context of the entire statute, AS 12.30.040:

Release after conviction. (a) A person who has been convicted of an offense and is awaiting sentence, or who has filed an appeal shall be treated in accordance with the provisions of AS 12.30.020 unless the court has reason to believe that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to other persons and the community. If that determination is made, the person may be remanded to custody. This section does not affect the right of a person appealing from a judgment of conviction from a district court to the superior court to be released on bail pending appeal under Rule 2(c) of the District Court Rules of Criminal Procedure.

Continued on p. 5.

The supreme court has implemented this statute by the adoption of two appellate rules: Rule 206(b)¹ and Rule 207.²

1. Appellate Rule 206(b). Stay of Execution and Release Pending Appeal in Criminal Cases:

(b) Release Pending Appeal. When an appeal on the merits is pending, an appeal under AS 12.30.030(b) from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion shall comply with Rule 503, and shall contain specific factual information relevant to the factors set forth in AS 12.30.020(c), including but not limited to the following:

(1) The full name of the appellant, the trial court docket number of the case, the offenses of which the appellant was convicted, the date of sentencing, and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

Continued on p. 4.

2. Appellate Rule 207. Appeals Relating to Release Prior to Judgment:

An appeal authorized by AS 12.30.030(b) or AS 12.30.040, relating to the release of a criminal defendant prior to the entry of final judgment, shall be determined promptly. The appeal shall take the form of a motion and shall comply with Rules 206(b) and 503. The appellee may respond as provided in Rule 503(d). The court of appeals or a judge thereof may order the release of the appellant pending such an appeal. The decision of the court of appeals on such an appeal is a "final decision" within the meaning of Rule 302. (Supreme Court Order 439 effective November 15, 1980)

On March 27, 1981, Charles A. Griffith was convicted by a jury of robbery in the first degree, AS 11.41.500. He has appealed that conviction and the resulting sentence. That appeal is pending and is not yet ripe for decision and consequently, it will not be addressed in this opinion. The sole issue before us now concerns Griffith's challenge to an order denying him bail both pending sentencing and after sentencing pending a determination of his merit appeal. These issues are appealable apart from the appeal on the merits. See AS 12.30.030(b) which provides in relevant part:

When a court denies a motion under (a) of this section [a motion for release from pretrial or post-conviction detention] or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the rules of the Supreme Court of Alaska, and the District Court Rules of Criminal Procedure. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand the action for further proceeding, or remand the action directing entry of the appropriate order, which may include ordering the person to be released under AS 12.30.020(a). The appeal shall be determined promptly.

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska, 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

CHARLES A. GRIFFITH,)	
)	
Appellant,)	File No. 5914
)	
v.)	<u>O P I N I O N</u>
)	
STATE OF ALASKA,)	
)	[No. 71 - March 4, 1982]
Appellee.)	
_____)	

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: David C. Backstrom, Assistant Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for Appellant. Thomas A. Miller, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Wilson L. Condon, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

SINGLETON, Judge.
COATS, Judge, concurring.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

JUNE 1, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 633 - "An Act prohibiting personal recognizance release when the offense charged is a violent offense."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 2:00 P.M. Committee members present were: Senators Rodey, Anderson, and Parr. Senators Bennett and Ray were absent.

003 - Call to order.

008 - Chairman Rodey brought HB 633 before the committee.

025 - Senator Anderson expressed concern of people being released prematurely without going through all of the proper proceedings and causing a threat to society.

216 - After a brief discussion, Senator Anderson moved to adopt the Senate committee substitute and pass the bill from committee with individual recommendations. There was no objection and the bill was passed.

229 - Chairman Rodey brought a resolution dealing with a code of ethics before the committee. There was a question of having the Legislative Council or a Joint Ethics Committee doing the work during the interim.

234 - Senator Rodey expressed that careful work is more important than the work being done quickly.

236 - Senator Anderson suggested giving it to the Legislative Council.

245 - Senator Rodey stated that he would prefer to have three appointed by each house.

246 - Senator Anderson suggested changing line 26 to read "three" instead of "five", and line 27 also.

255 - Chairman Rodey mentioned that the committee did not have to pass on the resolution. He was going to give the resolution to the Rules Committee, but he wanted to know the committees opinion.

337 - Chairman Rodey adjourned the meeting at 2:25 P.M.



Alaska Judicial Council

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ATTORNEY MEMBERS
MARCUS R. CLAPP
JAMES B. BRADLEY
JOSEPH L. YOUNG

January 14, 1982

CHAIRMAN EX OFFICIO
EDMOND W. BURKE
CHIEF JUSTICE
SUPREME COURT

Melissa Fouse
Office of Senator Sturgulewski
Pouch V
Juneau, Alaska 99811

Dear Melissa:

This is to confirm the statistical information I provided you in our telephone conversation of January 14, regarding the number of serious felony offenders released on their own recognizance. As I explained to you on the phone, the Judicial Council's data includes information on custodial status -- i.e., own recognizance, bail, etc. -- at the time of sentencing. The data includes all offenses committed in 1980 that were originally charged as a felony that resulted in a conviction in Anchorage, Fairbanks, and Juneau.

<u>Offense</u>	<u>Number of Cases</u>	<u>N</u>	<u>Number cases on own recogn. at sentencing % of all cases</u>
Murder 1	5	0	0%
Murder 2	3	0	0%
Kidnapping	1	0	0%
Manslaughter	3	0	0%
Assault 1	10	2	20%
Sex. Assault 1	10	2	20%

Melissa Fouse
January 14, 1982
Page Two

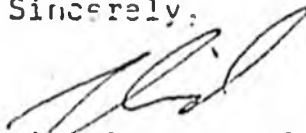
<u>Offense</u>	<u>Number of Cases</u>	<u>N</u>	<u>Number cases on own recogn. at sentencing % of all cases</u>
Robbery 1	13	0	0%
Assault 2	23	3	13%
Sex. Assault 2	1	0	0%
Robbery 2	8	1	12%
Negligent Homocide	1	1	100%

I have enclosed three recent Judicial Council reports that you may find helpful. They include, (1) Alaska Felony Sentences: 1976-1979, (2) "Preliminary Report on Fish and Game Offense Sentences", and (3) "Preliminary Report of 1980 Felony Sentencing Patterns"

I hope the information I have included, above, is helpful. Please do not hesitate to contact me if we can be of any further assistance.

I look forward to meeting with you in Juneau in the near future.

Sincerely,



Nicholas Maroules
Executive Director

Enclosures: as stated



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 18, 1892

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

"B 633 - "An Act authorizing an advisory vote on raising the age of majority to 21 for the purpose of regulation of alcoholic beverages and authorizing an advisory vote on legalizing possession of marijuana by adults for their own use; and providing for an effective date."

CSHB 112 - "An Act relating to revocation or limitation of the driver's license of a person under 19 years of age who is convicted of driving while intoxicated, and authorizing persons 16 years of age or older to be present in certain premises that serve alcoholic beverages."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 3:20 P.M. Committee members present were: Senators Parr, Ray, Rodey, and Anderson. Senator Bennett was absent.

005 - Call to order.

015 - Chairman Rodey brought HB 633 before the committee.

060 - Representative Anderson testified against placing the HESS Committee substitute language on HB 633, stating it was dirty politics.

122 - After brief discussion, Senator Ray suggested an amendment adding a ballot question on whether the voting age be raised from 18 to 21.

205 - After discussion, Senator Ray's amendment was adopted with no objection.

249 - Senator Anderson moved that the Senate CSHB 633 along with Senator Ray's amendment be added to CSHB 155 St. Aff. amended. There was no objection.

264 - Chairman Rodey brought HB 112 before the committee.

289 - Senator Ray objecting to section one, stated that if you allow kids 16 years of age to enter premises where liquor is served, you are just going to put the burden on the licensees. The licensees are not going to let them in anyway, so they will be the one's who will have to turn them away, instead of the law.

580 - Senator Rodey states that the language evoking the license of a person under the age of 19 who is picked up for driving while intoxicated is a good idea and important to public safety.

605 - Senator Ray moves to delete Sec. 1 & 2 of the bill.

606 - Senator Parr objects. Chairman Rodey takes a vote on the motion. Senator Parr votes no. Senators Ray, Rodey, and Anderson vote yes. The motion is adopted.

614 - Senator Anderson moved to adopt the CS and move the bill from committee. There was no objection.

639 Chairman Rodey adjourned the meeting at 4:00 P.M.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1982

SUBJECT: Single subject rule
TO: Senator Charles H. Parr
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether questions for an advisory vote relating to increasing the drinking age and legalizing the use of marijuana may be combined in one bill without violating the single subject rule.

The single subject rule is contained in Section 13, Article II, Constitution of the State of Alaska which provides:

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The primary aim of the rule has been stated by our court to be restraint of the log-rolling process in the legislature and describes log-rolling as deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966).

The test which broadly 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 the 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.'

was adopted in Gellert v. State, 522 P.2d 1120 (Alaska 1974), and has been quoted in each subsequent case in point in Alaska with approval. It is therefore well settled that this broad language is the standard against which compliance with the single subject rule is to be tested.

There would appear to be a connection both logically and in popular understanding between the use of alcohol and the use of marijuana since the use of either has related although not identical social policy implications.

In my opinion this would not violate the single subject rule.

BGB:ljb